LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 117

HERMOINE P. RICE, PETITIONER,

vs.

LILLIAN P. RICE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITION FOR CERTIORARI FILED JUNE 24, 1948.

CERTIORARI GRANTED OCTOBER 18, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 117

HERMOINE P. RICE, PETITIONER,

vs.

LILLIAN P. RICE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

INDEX

	Original	Print
Proceedings in Supreme Court of Errors of State of Connecticut	1	1
Caption (omitted in printing)	1	
Record from Superior Court of New Haven County	1	1
Appearances of counsel (omitted in printing)	1	
Complaint	2	1
Answer	4	3
Stipulation for reference	5	3
Order for reference	6	4
Report of State Referee	6	5
Amendment to report of State Referee	9	7
Remonstrance to Referee's report	10	8
Part "A"—Claimed omission of facts and facts found without evidence	10	8
Part "B"—Claims of law	12	10
Part "C"—Claimed facts to be added	13	11
Part "D"—Claimed reasons for rejection	15	12
Defendants' Exhibit 1a—Excerpts of testimony [agreement as to record: Hermoine Rice]	15	13
Defendants' Exhibit 1b—Excerpts of testimony [Hermoine Rice, Mr. McLaughlin, Earl G. Eddy, Martha S. Eddy, Laura Dell Matson]	16	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 29, 1948.

—9134

	Original	Print
Record from Superior Court of New Haven County—Continued		
Defendants' Exhibit 1c—Excerpts of testimony [Hermoine Rice]	21	20
Defendants' Exhibit 1d—Excerpts of testimony [Mrs. Mattson]	22	21
Defendants' Exhibit 1e—Excerpts of testimony [A. Smith, James S. Morgan, Lillian Rice, Dallas W. Thomas, Claude York]	22	21
Defendants' Exhibit 1f—Excerpts of testimony [Hermoine Rice]	26	25
Defendants' Exhibit 1g—Excerpts of testimony [Atty. McLaughlin, Hermoine Rice]	26	26
Answer to remonstrance	27	27
Part "A"	27	27
Part "B"	29	29
Part "C"	30	30
Stipulation re correction of State Referee's report	31	31
Amended remonstrance	32	31
Answer to amended remonstrance	41	39
Judgment	42	40
Defendants' appeal	44	42
Motion for certification of record	45	43
Assignments of error	46	44
Judge's certification	46	44
Defendants' Exhibit 1—All the evidence and rulings certified by the Court	47	45
Appearances	47	45
Offer of plaintiff's exhibit "A"—Transcript of record and testimony in Nevada court	47	45
Testimony of Mrs. Laura Dell Matson	48	46
Herbert N. Rice	49	47
Decree of divorce	51	50
Witnesses produced on behalf of plaintiff—		
Testimony of John T. McLaughlin (deposition):		
Direct	52	51
Cross	54	53
Testimony of Lillian Pauline Rice:		
Direct	57	56
Testimony of Abraham E. Smith:		
Direct	72	74
Cross	77	79
Redirect	78	81
Recross	78	81
Testimony of Thomas J. Howard:		
Direct	78	82
Cross	81	85
Redirect	81	85
Testimony of James S. Morgan:		
Direct	81	86
Cross	84	89

	Original	Print
Record from Superior Court of New Haven County—Continued		
Witnesses produced on behalf of plaintiff—Continued		
Testimony of Lillian Rice (recalled):		
Direct	89	94
Cross	106	113
Testimony of Dallas U. Thomas:		
Direct	115	123
Cross	117	126
Redirect	121	131
Recross	122	132
Testimony of Claude T. York:		
Direct	122	132
Cross	127	139
Redirect	129	142
Recross	130	143
Stipulations as to certain facts	131	144
Witnesses produced on behalf of defendants—		
Testimony of Earl G. Eddy (deposition):		
Direct	134	147
Cross	135	148
Redirect	139	154
Recross	140	155
Testimony of Martha S. Eddy (deposition):		
Direct	140	155
Cross	143	158
Testimony of Laura Dell Matson (deposition):		
Direct	145	161
Cross	148	164
Redirect	153	170
Testimony of Hermoine Rice:		
Direct	154	172
Cross	168	189
Redirect	182	207
Reporter's certificate	182	207
Referee's certificate	183	208
Judge's certificate	183	208
Clerk's certificate	183	208
Rescript	184	209
Docket entries	184	209
Opinion, Brown, J.	185	210
Judgment	192	217
Clerk's certificate	193	218
Order allowing certiorari	194	219

[fol: 1] [Captian omitted]

IN SUPERIOR COURT OF NEW HAVEN COUNTY

LILLIAN P. RICE

vs.

HERMOINE P. RICE et al.

[Appearances omitted]

[fol. 2] COMPLAINT

To the Sheriff of the County of New Haven, His Deputy, or Either Constable of the Town of West Haven, Within Said County—Greeting:

By authority of the State of Connecticut you are hereby commanded to summon Hermoine P. Rice of Herlong, California and Walter K. King of West Haven, Connecticut, Administrator of the Estate of Herbert N. Rice, deceased, to appear before the Superior Court to be held at New Haven, within and for the County of New Haven, on the first Tuesday of April, 1946, then and there to answer unto Lillian P. Rice of Woodbridge, Connecticut, in a civil action, wherein the plaintiff complains and says:

1. The plaintiff and Herbert N. Rice were married at Haverhill, Massachusetts on July 7, 1921.

2. Subsequent to said marriage the plaintiff and said Herbert N. Rice resided together as husband and wife, and from 1928 to September, 1942 resided continuously together as husband and wife in the Town of Woodbridge, Connecticut.

3. On or about September 1, 1942 said Herbert N. Rice secured temporary employment in Springfield, Massachusetts, but on frequent occasions returned to his home in Woodbridge, Connecticut, where he maintained his residence and where the plaintiff continued to live and is still living.

4. In the month of March, 1944 said Herbert N. Rice went to Reno, Nevada, where he temporarily resided from on or about March 23, 1944 until on or about July 1, 1944.

5. On May 5, 1944 said Herbert N. Rice brought an action for divorce against the plaintiff to the Second Judicial Dis-

trict Court of the State of Nevada, in and for the County of Washoe.

6. Said complaint for divorce was served on the plaintiff on or about May 12, 1944 by leaving a copy thereof in her hands in Woodbridge, Connecticut.

[fol. 3] 7. The plaintiff did not enter an appearance in said divorce action in the State of Nevada.

8. On June 13, 1944 a decree of divorce was granted in said Second Judicial District Court of the State of Nevada, in and for the County of Washoe, in favor of said Herbert N. Rice and against the plaintiff.

9. Said Herbert N. Rice had no bona fide residence or domicile in said State of Nevada, either at the time of bringing his said complaint for divorce or at the time of the entering of said decree of divorce, and his residence in said State of Nevada was colorable only.

10. Subsequent to the entering of said decree of divorce, and on or about July 3, 1944, said Herbert N. Rice married the defendant, Hermoine P. Rice.

11. Immediately after said marriage and after the entry of said decree of divorce, said Herbert N. Rice departed from said State of Nevada and has never resided therein at any time since said departure.

12. On December 23, 1944 said Herbert N. Rice died in Herlong, California, where he had continuously lived for five months immediately preceding his death.

13. The said Herbert N. Rice, at the time of his death, was the owner of certain real estate located in Woodbridge, Connecticut, and on or about March 20, 1945, administration on his estate was granted by the Probate Court for the District of New Haven, Connecticut, and the defendant Walter K. King was duly appointed Administrator of said estate and is now acting as such Administrator.

The plaintiff claims:

1. A declaratory judgment ordering and decreeing that said decree of divorce of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, was a colorable one and did not dissolve the marriage rela-
[fol. 4] tion between the plaintiff and said Herbert N. Rice,

and that said plaintiff and said Herbert N. Rice were still husband and wife at the time of the death of said Herbert N. Rice on December 23, 1944 and that the plaintiff is now the widow of said Herbert N. Rice.

Frank S. Bergin of New Haven, Connecticut, is recognized in $70.00 to prosecute, etc.

Of this writ, with your doings thereon, due service and return make.

Dated at New Haven, Connecticut, this 20th day of March, 1946.

Ralph H. Clark, Commissioner of the Superior Court for New Haven County.

IN SUPERIOR COURT OF NEW HAVEN COUNTY

ANSWER—Filed April 25, 1946

1. The defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, and 7 of plaintiff's complaint.

2. The defendants deny the allegations contained in paragraphs 2, 3, 4, 9 and 11 thereof.

3. The defendants admit the allegaitons contained in paragraphs 5, 6, 8, 10 and 13 thereof.

4. The defendants admit that on December 23, 1944 Herbert N. Rice died, as alleged in paragraph 12 thereof, but deny all the other allegations contained in said paragraph.

The Defendants, by Pond, Morgan & Morse, Their Attorneys.

[fol. 5] IN SUPERIOR COURT OF NEW HAVEN COUNTY

STIPULATION FOR REFERENCE—Filed January 14, 1947

Whereas, the above entitled case was tried to the court before the Hon. Francis A. Pallotti, and briefs were filed by all counsel within the time limited by the court, and

Whereas, the Hon. Francis A. Pallotti died on December 21, 1946, before rendering any decision or entering judgment in said case.

Now therefore, it is stipulated and agreed by and between the plaintiff and the defendants in said case:

1. That, subject to the approval and order of this court, a complete transcript be made of all the testimony and proceedings in the trial of said case, and that said transcript, together with all depositions, all exhibits admitted in evidence in said case, and all briefs filed by counsel, be referred to the Hon. John W. Banks, State Referee.

2. That after said transcript, together with all depositions, exhibits and briefs, have been referred to said Hon. John W. Banks, he shall proceed with said case without any further presentation of evidence, argument or briefs, in the same manner as though said case had been referred to him originally under and pursuant to the provisions of Sections 167 to 178 inclusive of the Connecticut Practice Book, and report make to this Court.

Dated at New Haven, Connecticut, this 14th day of January, 1947.

Ralph H. Clark, Samuel A. Persky, Attorneys for the Plaintiff; Pond, Morgan & Morse, Attorneys for the Defendants.

[fol. 6] IN SUPERIOR COURT OF NEW HAVEN COUNTY

ORDER FOR REFERENCE—Filed January 14, 1947

Upon the foregoing stipulation and agreement, it appearing to the Court that all of the facts stated therein are true:

Now therefore, it is ordered, adjudged and decreed:

1. That a complete transcript be made of all of the testimony and proceedings in the trial of the above entitled case before the Hon. Francis A. Pallotti, and the same when completed filed with this Court, at expense of State.

2. That said transcript, together with all depositions, all exhibits admitted in evidence in the trial of said case before the Hon. Francis A. Pallotti, and all briefs filed by counsel in said case, be, and the same are hereby referred to the Hon. John W. Banks, State Referee, to be acted upon by him in the same manner as though said case had been originally referred to him under and pursuant to the provisions of Sec-

tions 167 to 178 inclusive of the Connecticut Practice Book, and that said Hon. John W. Banks, when he has completed his duties as State Referee thereunder, report make to this Court.

Quinlan, J.

IN SUPERIOR COURT OF NEW HAVEN COUNTY.

REPORT OF STATE REFEREE—Filed April 5, 1947

The above entitled cause having been originally tried before Hon. Francis A. Pallotti, and the Superior Court sitting in New Haven having ordered that a transcript of the testimony taken, together with all depositions, all exhibits admitted in evidence upon the trial and all the briefs filed by counsel be referred to me as State Referee to be acted upon in the same manner as though the case had been originally referred under the provisions of Sections 167 to 178 inclusive of the Practice Book, and report made to the Court, I have read the complete transcript of the evidence, the depositions, the exhibits and briefs of counsel and report as follows:

[fol. 7] 1. The plaintiff and Herbert N. Rice were married July 7, 1921 and lived in New Haven and Hamden, and from 1928 to September, 1942, in Woodbridge.

2. Rice was engaged in the automobile business, being the principal stockholder in a corporation known as The Rice-Nash Agency. In June, 1942, the business was closed up, most of the equipment was sold, a portion of it leased, and the remainder stored in the Rice residence in Woodbridge.

3. In September, 1942, Rice obtained a job in Springfield, Mass., and lived there in a rented room until March, 1944. Rice told the plaintiff and others that this job was a temporary one and that when the war was over he intended to return to Woodbridge and re-open his automobile business. The plaintiff remained in Woodbridge and Rice retained his home there during this period.

4. About the time that Rice went to Springfield he and the defendant, who lived in New Haven, discussed the question of their marriage, after Rice should have secured a divorce from the plaintiff. In February, 1944, Rice told defendant he was going to Reno to get a divorce, that if

he got a divorce he was going to ask her to marry him; that he had been advised that if he did not make his permanent home in Nevada the divorce would be questioned and that after their marriage they must make their permanent home in Nevada, and that he was never coming back to Connecticut.

5. In March, 1944, Rice went to Reno, Nevada, for the sole purpose of obtaining a divorce from the plaintiff. He arrived in Reno on March 23, and started his divorce action on May 5. Personal service was made upon the plaintiff on May 12 and on June 13 the Nevada court entered a decree granting him a divorce from the plaintiff. Rice notified the defendant by wire of the granting of the divorce and she came to Reno, arriving there on July 3, and they were married that day.

[fol. 8] 6. When Rice got to Reno he rented a room in a rooming house by the week and obtained a job at war work. Shortly before his divorce he told the attorney who represented him in the divorce action that he had made application to the Army Employment Agency for a job and asked him if it would be all right for him to take a job at Herlong, California, and was told that it would be. Rice resigned his job in Reno the day before he and the defendant were married and upon their return from their wedding trip they went to Herlong where he had obtained a war job and the defendant a position as a nurse at the Army Post there. They lived in Herlong from July 15, 1944, until Rice died which was on December 23, 1944. In September, 1944, the defendant sent for her household furniture which she had placed in storage when she left New Haven to come to Reno and upon its arrival used it to furnish the bungalow in which they lived in Herlong.

7. Rice continued to pay rent for his room in Reno at a reduced price per week, it being occupied part of the time by others. He kept a trunk and some clothing and personal effects in a closet there and a short time after they went to Herlong the defendant brought a change of clothing which was left in the closet. They came to Reno occasionally for the weekend and then occupied the room. Rice continued to pay rent for the room in Reno because he did not know whether his job in Herlong would be permanent or whether they would like it there and if they didn't like

it they intended to return to Reno and make the room their home until they could find a place where they could get a house and start a guest house, and he asked his attorney to keep his eyes open for a good location for him to live in Reno.

8. On July 14, 1944, Rice and the defendant opened a joint bank account in a bank in Reno. In October, 1944, they made application to be made voters in Nevada but were told such applications could not be granted until they had resided in the state for one year.

[fol. 9] 9. Rice told his Reno attorney that he did not intend to return to Connecticut but to remain in Reno "indefinitely," and testified in his divorce action that it was his intention to remain there "indefinitely." He told other persons in Reno that he intended to make it his permanent home.

10. Rice never established a home in Reno. He intended to do so in the future if he did not like it at Herlong but did not have an unqualified intention to make a home there at present, and Reno was not his bona fide domicile.

John W. Banks, State Referee.

[Accepted Aug. 7, 1947.]

[See addition to report par. 11, page 31.]

IN SUPERIOR COURT OF NEW HAVEN COUNTY

AMENDMENT TO REPORT OF STATE REFEREE—Filed April 28, 1947

Paragraph 5 of the report heretofore filed in the above entitled cause is amended to read as follows:

5. In March, 1944, Rice went to Reno, Nevada, for the sole purpose of obtaining a divorce from the plaintiff. He arrived in Reno on March 23, 1944, and started his divorce action on May 5, 1944. Personal service in the divorce action was made upon the plaintiff on May 12, 1944, by leaving a copy of the complaint in her hands in Woodbridge, Connecticut. No appearance was entered in the divorce action by the plaintiff in this action and on June 13, 1944, the Nevada court entered a decree granting Rice a

divorce from the plaintiff in this action. Rice notified the defendant by wire of the granting of the divorce and she came to Reno, arriving there on July 3, 1944, and they were married on that day.

John W. Banks, State Referee.

[Accepted Aug. 7, 1947.]

[fol. 10] In Superior Court of New Haven County

Remonstrance to Referee's Report—Filed April 29, 1947

The defendants remonstrate against the acceptance of the report of the Referee filed on April 9, 1947 for the following reasons:

A

1. The material facts found in Paragraph 10 of the report are found without evidence, for it is undisputed that Herbert N. Rice never resided in Herlong, California before July 15, 1944, and that he resided in Reno, Nevada from March 23, 1944 up to July 15, 1944.

See Exhibit 1-a.

2. The report omits finding as a material fact, which was undisputed, that Herbert N. Rice resided in Reno, Nevada from March 23, 1944 up to July 15, 1944, and that his divorce from the plaintiff was decreed on June 13, 1944.

The complaint, Paragraph 4, what appears in the record heretofore quoted at page 235, and the complaint, Paragraph 8.

3. The report omits finding as a material fact, which there is no evidence to dispute, that Herbert N. Rice abandoned his domicile in Connecticut when he left Springfield, Massachusetts, on March 19, 1944, for Nevada.

See Exhibit 1-b.

4. The report omits finding as a material fact, undisputed by any evidence, that Herbert N. Rice's position in Herlong, California was a temporary position only, and that there were no civilian houses there.

See Exhibit 1-c.

5. The report omits finding as a material fact, which was undisputed, that Herbert N. Rice was never physically present in Connecticut or outside the State of Nevada from March 23, 1944 until after July 3, 1944.

See Exhibit 1-d.

[fol. 11] 6. The report omits finding as a material fact, which is undisputed by any evidence, that Herbert N. Rice never had any conversation or correspondence, except checks which his wife, the plaintiff, received, with any of the witnesses produced by the plaintiff, after March 11, 1944. Testimony of Abraham Smith to the effect that conversations he had with Herbert N. Rice concerning his intention, were between January, 1943 and April, 1943.

See Exhibit 1-e.

The last conversation or communication with Herbert N. Rice had by the witness Thomas J. Howard was at the time Herbert N. Rice was leaving this plant in Springfield prior to going to Nevada. And there is no testimony that the witness Claud York ever heard from Rice in any manner, nor did any of the other witnesses, except Mrs. Rice who received six checks, after March 11, 1944.

7. The report omits finding as a material fact in paragraph 3 that what "Rice told the plaintiff and others," concerning his intention wa all before he ever departed from Springfield.

See Exhibit 1-e under last paragraph.

8. The report omits finding as a material fact, in paragraph 5 thereof, which was undisputed by any evidence, that Herbert N. Rice expressed his intention before going to Nevada, to remain and live in Nevada, regardless of whether or not he obtained a divorce there.

See Exhibit 1-f.

9. The report omits to find as a material fact, paragraph 6, that was undisputed by evidence, that before going to Herlong, California, the said Herbert N. Rice, in asking his attorney if it would be all right for him to take a job in Herlong, that at said meeting the said Herbert N.

Rice wanted to maintain his residence in the State of Nevada, and on that particular occasion he said that it was his intention to continue to reside in Nevada after his marriage.

[fol. 12] Attorney McLaughlin's testimony, and that of Mrs. Rice.

See Exhibit 1-g.

A copy of all of the evidence before the Referee material to the foregoing grounds of remonstrance, and in fact a certified copy of all of the evidence and rulings before the Referee, is filed herewith, and the pages on the Exhibits attached hereto refer to the pages of said certified transcript, defendants' Exhibit 1.

B.

The defendants desire to present to this court certain claims of law made to the Referee as follows:

1. That the sole question in these proceedings is whether or not Herbert N. Rice was domiciled in the State of Nevada from March 23, 1944 to June 13, 1944, when his divorce from the plaintiff was granted.

2. That a person can have but one domicile.

3. That by leaving a former domicile, a person may obtain a new domicile of choice by physical presence in the new place, accompanied with the then intent to make that new place his permanent place of abode.

4. That no particular length of time is necessary to acquire a new domicile, the only requirements being (1) physical presence, plus (2) the animus menendi.

5. That Herbert N. Rice had abandoned his domicile in Connecticut.

6. That if he were domiciled in Nevada for a sufficient length of time to give the Nevada courts jurisdiction, his divorce is entitled to full faith and credit in Connecticut, and in every state in the Union.

7. That a man may be domiciled in a rooming house, in a hotel, in a car, in a boat, or practically in any kind of a shelter.

[fol. 13] 8. That evidence of the motive for which Herbert N. Rice went to Nevada is entirely immaterial and inadmissible.

9. That evidence of what his relations were with the plaintiff, whether pleasant or otherwise, is entirely immaterial and inadmissible.

10. That every natural person has a domicile, either by choice or by operation of law.

The report is insufficient to present said claims of law to this court, and the defendants respectfully request that it be recommitted for a finding by the Referee, concerning whether or not Herbert N. Rice abandoned his domicile in Connecticut when he arrived in the State of Nevada, and as to what was the domicile of Herbert N. Rice from the time he entered the State of Nevada until he left Nevada for Herlong, California in 1944.

The Referee should also make a finding as to what evidence he considered as to whether he considered all of the evidence, or whether he considered only so much of the evidence as he would have admitted had the matter been before him originally.

And the Referee should make a finding as to how he interpreted the words "for an indefinite period" with reference to the testimony of Herbert N. Rice in the divorce proceedings in Nevada.

A copy of all of the evidence, rulings, etc. contained in a certified transcript of the proceedings, is filed herewith, marked defendants' Exhibit 1, and the pages wherein these claims of law were set forth and the arguments in which they were advanced will be called to the attention of the court by page.

C

The defendants respectfully request the court to add to the report the following facts which were admitted, or not disputed by any evidence.

[fol. 14] 1. That some time in 1944 Herbert N. Rice consulted a Springfield lawyer concerning divorce, and was advised by a Mr. Callahan of Springfield, a lawyer practicing there, to go to Reno, Nevada for his divorce, and that if he did go to Reno, he would have to go there with the intention

of making it his permanent home, for if he came back to Connecticut, the validity of it could be questioned; that he told the defendant he was going to Reno and he desired to marry her if he were successful in obtaining a divorce, but that whether he received a divorce in Nevada or not, he intended to remain and live there.

2. That he told the defendant if she accepted his proposition of marriage she would have to come to Nevada with the intention of remaining there permanently.

3. That after arriving in Nevada he told persons who saw him practically every day, that it was his intention to remain in Nevada permanently, and that he did remain in Nevada, and lived in Nevada from March 23, 1944 until July 15, 1944.

4. That never until a month and two days after his divorce did he reside anywhere except in the State of Nevada, nor was he physically present in any other state than in the state of Nevada during that time.

5. That before accepting a temporary job even in Herlong, California, he consulted with his Nevada attorney as to whether or not it would be all right to take that job, and during that same conversation insisted that he wanted to maintain his residence in Nevada, and it was his intention to reside in Nevada after his marriage, and would probably purchase some property for the purpose of establishing a guest house for children.

6. That he continued to pay rent on what had been his home during his stay in Nevada up until the date of his death, notwithstanding he was working and staying in Herlong from July 15th until his death on December 23, 1944.

(See evidence submitted under A of this Remonstrance.)

[fol. 15] D

This report should not be accepted for the following reasons, apparent upon its face.

1. The material facts found in Paragraph 10 of the report are found without evidence.

2. The facts stated in said report are not sufficient to support the conclusion of the Referee set forth in Paragraph 10 of said report.

3. It does not appear from said report whether all evidence was considered by him, or whether he made rulings upon that evidence under a stipulation which referred the matter to him, the same as though it had been originally referred to him, although the case was tried by a judge who died before a decision had been rendered.

The defendants, By Pond, Morgan and Morse, Their Attorneys.

[See amendment to section O, page 32.]

DEFENDANTS' EXHIBIT 1-A

Mr. Clark.

"The third matter which was agreed should be read into the record is as follows: 'It is agreed that during the period from July 15, 1944 to December 23, 1944, Herbert N. Rice and the defendant Hermoine Rice lived in Herlong, California.'"

(Record page 235.)

Hermoine Rice.

"Q. It has been testified in this case that your husband went to Herlong, California, on July 15 and we have agreed that that was so, 1944. Do you know from your own knowledge what Herlong, California, consisted of?

A. Yes, sir.

Q. What was it that was there?

A. Herlong, California, was an ammunition deport, a storage depot and ordnance. It was a vital spot during the [fol. 16] war, and it was also an Italian War Prisoners' Camp, and we had a hospital there—it was a regular Army Post with barracks and all that sort of thing."

(Record page 317.)

[Filed: April 29th, 1947.]

DEFENDANTS' EXHIBIT 1-B

Hermoine Rice.

"Q. Did you know what date he actually did leave for Reno?

A. Yes.

Q. What was that date?

A. He left for Reno on March 13, 1944, at 11 p. b. in Springfield."

(Record, page 346.)

Testimony of Mr. McLaughlin:

"Q. When did you become acquainted with Herbert N. Rice?

A. On March 23, 1944.

Q. Did you interview him on that occasion?

A. I did.

Q. What conversation was had?

A. Mr. Rice told me he had been residing in West Springfield, Massachusetts and that his wife lived in Connecticut, and that he wanted a divorce. He did not know whether or not his wife would appear., I explained it would be necessary to reside here for a period of 43 days before our courts would accept his complaint in a divorce action, and that we had to effect service upon his wife, if she did not cooperate. At this particular time I also informed him that in the event a default decree was granted in the case, it would probably would not be recognized in the State of Connecticut. He informed me that it was his intention not to return to the State of Connecticut, but to remain here indefinitely. It was his intention to secure some type of employment here, inasmuch as he had been engaged in war work in Springfield, Massachusetts."

(Record pages 19, 20.)

"Q. Did you ever have any other conversation with Mr, Rice concerning his residence?

A. Yes.

Q. When did that conversation take place?

A. That conversation took place shortly before June [fol. 17] 13, 1944, a few days previous to the entry of the decree in this matter.

—. What was the nature of this particular conversation?

A. Mr. Rice informed me that he had made application for employment at the United States Employment Office, and that they were recruiting help for the Army Ammunition Base at Herlong, California, a short distance over the Nevada line. He wanted to know whether it was perfectly all right to take such a position. He wanted to maintain his

residence in the State of Nevada. I explained to him that it was perfectly all right to do so. On that particular occasion he stated that it was his intention to continue to reside here and after his marriage would probably purchase some property for the purpose of establishing a guest house for children. He requested me to keep my eyes open for a good location."

(Record pages 20, 21.)

-Earl G. Eddy.

"Q. Did he ever make any statements to you concerning his intention with reference to making Nevada his home?

A. Yes, he did, definitely.

Q. What was the nature of this statement?

A. He planned to stay here permanently, he told me that he never intended to return east. He wanted to make his permanent home in Nevada.

Q. These statements that you have alleged that he made with reference to making this home, when were these statements made?

A. I would say that they were made before and after he obtained his divorce.

Q. Do you know where he resided here in Reno?

A. Yes, on Lake Street, in the 700 block, I believe. 741, I believe.

Q. Did he ever discuss with you any plans that he had for entering into business here in Reno?

A. Yes, he told me that he intended to enter business here.

Q. Did you ever have any discussion with reference to his plans for the future?

A. Well, in a general way, we talked about it a good many times. We talked about his locating here and staying here permanently and going into business here, and making his permanent home here."

(Record, pages 251, 252 and 253.)

[fol. 18] "Q. You say that some of the time you saw Mr. Rice everyday?

A. Yes.

Q. During what period of time was that?

Q. Well, sometime after he arrived here in 1944, until after he was married I saw him often, perhaps once every day."

(Record page 255.)

Testimony of Martha S. Eddy:

"Q. Were you acquainted with Herbert M. Rice?
A. Yes.
Q. When did you become acquainted with him?
A. Sometime during March.
Q. Of what year?
A. 1944.
Q. How did you become acquainted with him?
A. He used to come up to the stand and buy milk shakes every day.
Q. Where is the stand located?
A. In the Southern Pacific depot.
Q. Did you ever see Mr. Rice at any place other than the stand?
A. Yes, I have seen him in my home and his home.
Q. What do you mean by his home?
A. He stayed on Lake Street. I visited him there.
Q. Over what period of time were you acquainted with Mr. Rice?
A. I met him in March, and knew him until he passed away on the 23rd of December.
Q. Of what year?
A. 1944.
Q. Did Mr. Rice ever make any statement to you or make statements in your presence with reference to his intention to make Nevada his permanent home?
A. Yes, he did.
Q. Where did he make those statements?
A. Well, he used to talk about it at the stand when we were togther, he used to talk about the kind of a home he would build.
Q. Any place else he would make those statements?
A. No——
"Q. And what was the nature of his statements?
A. He used to talk about how he liked it here and how he was going to always live in Nevada, and how he was going to build his home with knotty pine walls.

Q. Did he ever make any other statements in your presence with reference to his plans for the future?

A. Only that he intended to stay west, that he was going to live in Nevada and that he was not going east again.

"Q. For your information, Mrs. Eddy, the record shows that Mr. Rice was divorced from the first Mrs. Rice on June 13, 1944. Did he make any of these statements with reference to making Nevada his permanent home that you have [fol. 19] testified to, before the date of divorce?

A. He sure did.

Q. Did he make any such statement after his divorce?

A. He just always talked about it casually.

Q. After he was divorced?

A. Yes, just casually before and after."

(Record, pages 267, 268, 269, 271.)

Testimony of Laura Dell Mattson:

"Q. Were you acquainted with Herbert N. Rice?

A. Yes.

Q. Would you state the circumstances under which you became acquainted with him?

A. He came to my house for a room. He came to get a divorce. He took a room at my house.

Q. When was that?

A. March 23.

Q. What year?

A. 1944.

Q. How long did he have a room at your house?

A. Well, from March 23rd he had a room up until the 30th of December, after his death December 23rd."

(Record, pages 275, 276.)

"Q. What did he say with reference to making Nevada his permanent home?

A. He was very fond of it here, he liked the climate and liked the people. He always enjoyed himself when he went out here. I don't remember his exact words."

(Record, page 278.)

"Q. Were those statements made before or after his divorce from the first Mrs. Rice?

A. From the first time he came to my place he always

was in love with Nevada, he always talked about how much he liked it here and how much he was enjoying it and how pleased he was with the climate and with his work. I never heard him run down Nevada once.

Q. Mrs. Mattson, for your information the record shows that he was divorced on June 3, 1944, and I ask you with respect to the time of that divorce, did you ever hear him make any statements after that date indicating that he intended to make Nevada his permanent home?

Q. That would be from June 3, 1944, up to the time of his death?

A. You mean for a date or time?

Q. At any time after his divorce from his first wife.

A. Well, he always intended to live out here."

(Record, page 279.)

[fol. 20] Cross-examination:

"Q. But the thing that stand- out more clearly in your mind was his love for the State of Nevada and his desire to stay here?

A. Yes, I heard him say that many times."

(Record, page 282.)

"Q. Isn't it a fact that at that time when you had this conversation with me, you advised me that except for week-end visits and occasional visits, that Mr. Rice no longer resided at your home after his marriage to the second Mrs. Rice?

A. No, he did not reside at Herlong. He came in all the time and made my place his home, bathed, and changed his clothes."

(Record, page 285.)

Mrs. Rice's testimony (Hermoine):

"Q. When did you first learn that Herbert N. Rice was going to the State of Nevada?

A. The early part of February, 1944.

Q. From whom did you learn it?

A. From Mr. Rice himself.

Q. In that conversation, if you can remember it, what did he say about going to Reno?

A. He said that he had spoken to an attorney in Springfield.

Q. Did he give you the attorney's name?

A. Yes, sir, a Mr. Gerald Callahan. Mr. Callahan told him to go out to Reno to get his divorce, that he would have to make it his permanent home and never come back to the State of Connecticut, or the validity of it would be questioned, and he said if he was successful, he would ask me to marry him and if he wasn't—that he would remain in Nevada and get some type of work to do. His intention was to live there.

Q. His intention was to live in Nevada whether he secured a divorce in Nevada or not?

A. Yes."

(Record, page 299.)

"Q. Is that what he said to you, his intention was to live there?

A. Yes, sir."

(Record, page 300.)

"Q. When Mr. Rice told you sometime in February, 1944 that he was going to Reno for the purpose of getting a [fol. 21] divorce and that his lawyer had told him it would be necessary for him to remain in Nevada if he didn't want his divorce questioned in the State of Connecticut, did Mr. Rice say anything to you at that time concerning his intention of returning or never returning to Connecticut?

A. Mr. Rice never intended——

Q. No, did he say anything to you? That's what I want to know. Did he tell you?

A. Yes, he told me he was never going to come back to Connecticut or the east."

(Record, page 303.)

Cross-examination.

By Mr. Persky:

"Q. And in that same telephone conversation he told you that it was his intention to reside permanently in Nevada and never to return to Connecticut?

A. That is right, sir."

(Record, page 345.)

[Filed: April 29, 1947.]

Hermoine Rice.

Referring to Herlong, California:

"Q. What was it that was there?

A. Herlong, California, was an ammunition depot, a storage depot and ordnance. It was a vital spot during the war, and it was also an Italian War Prisoners' Camp, and we had a hospital there—it was a regular Army Post with barracks and all that sort of thing."

(Record, page 317.)

"Q. Will you tell us where Herlong, California, was situated—I mean with reference to any main road.

A. Herlong, California, of the Sierra Ordnance Depot was situated seven miles in from the main highway between Reno and Susanville in the desert.

Q. Were there any civilian houses at all in Herlong, California.

A. No, sir.

Q. Was there anything else there in Herlong, except this ordnance depot—the Sierra Ordnance—I will get the correct name of it for you—the Sierra Ordnance Depot?

A. That's right."

(Record, page 318.)

[fol. 22] "Q. That is the only thing that was there?

A. That's all.

Q. It was an Army post totally, an Army post with civilian employees under the government, and war prisoners and our own soldiers and maintained by the government, and I was under the government."

(Record, page 319.)

[Filed: April 29th, 1947.]

DEFENDANTS' EXHIBIT 1-D

Mrs. Mattson.

"Q. When did you first see Mr. Rice in Reno, Nevada?
A. March 23, 1944.
Q. Has he been residing at your home?
A. Yes, he has.
Q. How frequently have you seen him in Reno, Nevada, since March 23, 1944?
A. Every single day.

(Record, page 11.)

"The third matter which was agreed should be read into the record is as follows: "It is agreed that during the period from July 15, 1944 to December 23, 1944, Herbert N. Rice and the defendant Hermoine Rice lived in Herlong, California.'"

(Record, page 235.)

[Filed: April 29th, 1947.]

DEFENDANTS' EXHIBIT 1-E

A. Smith.

"Q. Between what dates were you employed there? (Referring to Springfield Machine and Foundry Co.)
A. Sometime in—between January of 1943 and April of 1943."

(Record, page 89.)

"Q. What were the two dates between which these conversations occurred?
A. Between January, 1943, and April, 1943."

(Record, page 92.)

"Q. When did you leave this Springfield Machine and Foundry Company?
A. Sometime in April, 1943."

(Record, page 100.)

[fol. 23] "Q. So, what you have just told us is based upon the way he talked to you sometime in 1943 between January and April?

A. Yes, sir."

(Record, page 102.)

The last conversation or communication with Herbert N. Rice had by the witness Thomas J. Howard was at the time Herbert N. Rice was leaving this plant in Springfield prior to going to Nevada.

"Q. At the time he was leaving, did you have a talk with him at that time?

A. Yes, he came around to say good-bye to me."

(Record, page 105.)

"Q. What did he say?

A. He told me he wanted to take a rest before resuming the automobile business.

Q. Did he tell you where?

A. I don't recall that he did.

Q. You didn't know where he was going for a rest?

A. Oh, going for a rest?

Q. Yes.

A. As I recall, he told me he was going home."

(Record, page 106.)

Cross-examination:

"Q. At the time that you had your last talk with him, he said that he was quitting because he was going home for a rest?

A. That is my recollection, yes.

Q. That is what he told you, the reason why he was quitting there?

A. Yes.

Q. And that is all you knew—you thought the man had left the plant and had gone home for a rest?

A. Yes."

(Record, page 107.)

The conversation testified to by James S. Morgan:

"Q. After that, did you ever have any conversation with him in which he mentioned his plan of resuming the automobile business in New Haven after the war?

A. Approximately a week before Mr. Rice left the Springfield Machine and Foundry, he came in to tell me he was

resigning. He told me at that time he didn't feel well at all, and that he was tendering his resignation and was going to [fol. 24] Wisconsin to the Nash-Kelvinator Corporation, and at that time he was going to discuss with them the future of the automobile business in New Haven, and after he had learned the factory's plans, he was coming back to New Haven and was going to have a slight operation, and after that was over, he was going to resume—he hoped to resume with the permission of the Nash factory his automobile business in New Haven.

(Record, pages 109, 110.)

Cross-examination:

"Q. You remember now when Mr. Rice went to work at Springfield?

A. Sometime in September, 1942.

Q. Remember when it was when he left the plant?

A. He left in March, 1944."

(Record, page 112.)

"Q. Didn't you ask him, why are you quitting at this time, Herb?

A. He came in and told me he was quitting.

Q. He said he was going to Wisconsin?

A. Yes, sir.

Q. He was going to see the Nash-Kelvinator and see what the prospects were going to be for opening up after the war?

A. Well, he was going—the way he put it, he was going to ask them if now was the time to open up—he wanted to get an idea from them when they thought it would be a good time to open up, whether it was the present or six months from now or a year from now.

Q. Did you ever hear from Mr. Rice thereafter as to whether or not the Nash Corporation had cancelled the franchise here in New Haven?

Objected to. Question changed.

Q. Did you ever hear from Herb Rice after that?

A. After what?

Q. After he had left your plant?

A. No, I never did."

(Record, pages 115, 116.)

Testimony of LILLIAN RICE:

"Q. Now, after your husband had disappeared in the manner you described, did you receive any further checks with your husband's signature on them?

A. Yes, for about six weeks I received——

Q. In those six weeks, how many checks did you receive?

A. I think six checks.

Q. Were they a week apart?

[fol. 25] A. They were a week apart.

Q. And did they come to you by mail?

A. They came to me by mail.

Q. From where?

A. Springfield.".

(Record, page 152.)

Q. Could you tell from the envelope from what office or place in Springfield they were being mailed?

A. No.

Q. Nothing on the envelope to indicate it?

A. The checks were made out in Mr. Rice's handrwriting.

Q. So that you received them during March and April and the early part of May?

A. I received them weekly.

Q. They were all dated the same day, March 16?

A. That is right."

(Record, page 153.)

"Q. You didn't have any idea at any time, as I understand it, that Mr. Rice was going to Nevada?

A. I had no idea."

(Record, page 189.)

"Q. When did you first learn your husband had left for Reno, Nevada?

A. I believe the first inkling I had of perhaps his going to Reno was that they said his truck was shipped on to Reno on—I believe that was March 20—if March 20 is on a Monday.

Q. That was 1944?

A. 1944."

(Record, page 193.)

The witness DALLAS W. THOMAS:

"Q. Did you ever write to Herbert N. Rice yourself from the time you saw him this Sunday in February, 1944, up to the date he died?

A. Without knowing his address.

Q. You didn't even know his address?

A. No, after I saw him in February.

Q. After you saw him in February, you didn't know where he was?

A. No, sir.

(Record, page 209.)

Testimony of CLAUD YORK, a business associate, who with Herbert N. Rice owned practically all of the stock of the Rice-Nash Corporation:

"Q. When you were talking with him in 1944, which you said was some time in February, when you were having [fol. 26] lunch with him up in Springfield, he said that he expected after the war—was that what he said?

A. Yes.

Q. After the war was over he said he expected to open the Rice-Nash Corporation business again?

A. Yes, sir.

Q. And you said that that was the last time that you ever saw him?

A. That is right."

(Record, page 225.)

[Filed: April 29, 1947.]

DEFENDANTS' EXHIBIT 1-F

Hermoine Rice:

"Q. Did he give you the attorney's name?

A. Yes, sir, a Mr. Gerald Callahan, Mr. Callahan told him to go out to Reno to get his divorce, that he would have to make it his permanent home and never come back to the State of Connecticut, or the validity of it would be questioned, and he (referring to Rice) said if he was successful, he would ask me to marry him, and if he wasn't—that he

would remain in Nevada and get some type of work to do. His intention was to live there.

Q. His intention was to live in Nevada whether he secured a divorce in Nevada or not?

A. Yes."

(Record, page 299.)

"Q. Is that what he said to you, his intention was to live there?

A. Yes."

(Record, page 300.)

[Filed: April 29th, 1947]

DEFENDANTS' EXHIBIT 1-G

Atty. McLaughlin:

"Q. What was the nature of this particular conversation?

A. Mr. Rice informed me that he had made application for employment at the United States Employment Office, and that they were recruiting help for the Army Ammunition Base at Herlong, California, a short distance over the Nevada Line. He wanted to know whether it was perfectly [fol. 27] all right to take such a position. He wanted to maintain his residence in the State of Nevada. On that particular occasion he stated that it was his intention to continue to reside here and after his marriage would probably purchase some property for the purpose of establishing a guest house for children."

(Record, page 21.)

Testimony of Mrs. Rice as to what Rice told her:

"Q. Before you had gone or Mr. Rice had gone to Herlong for the purpose of working there, did you have any talk with Mr. Rice concerning what if any bearing it might have on permanent residence in Nevada?

A. Yes, sir.

Q. I am asking you what Mr. Rice told you. Tell us what he told you?

A. Mr. Rice told me this.

Q. All right.

A. That he had been in to see Mr. McLaughlin even before his divorce and asked him if a job in Herlong would have any bearing on his residence in Reno, and he said, no, that an Army depot would not make any difference to a Reno residence because that could not be called your permanent home."

(Record, pages 319, 320.)

[Filed: April 29th, 1947]

[Overruled Aug. 7, 1947]

IN SUPERIOR COURT OF NEW HAVEN COUNTY

ANSWER TO REMONSTRANCE TO REFEREE'S REPORT—Filed May 2, 1947

A

1. Plaintiff denies the allegation of paragraph 1 of the Remonstrance that the material facts found in paragraph 10 of the Report are found without evidence because said facts are conclusions based on subordinate facts found on conflicting evidence as to whether Herbert N. Rice had an unqualified intention to make a home in Reno at the moment and not in the future.

2. Plaintiff denies the allegation in paragraph 2 of the Remonstrance that the Report omits finding the facts set forth in said paragraph because all of said facts are found in paragraphs 5 and 6 of the Report.

[fol. 28] 3. Plaintiff denies that the fact alleged in Paragraph 3 of the Remonstrance is an undisputed fact.

4. Plaintiff denies that the facts set forth in paragraph 4 of the Remonstrance were undisputed facts and further claims that said facts are immaterial to the sole issue in this case of whether Herbert N. Rice had a bona fide domicil in Nevada at the time of securing his alleged divorce.

5. Plaintiff denies the allegation in paragraph 5 of the Remonstrance that the Report omits finding as a material fact the facts set forth in said paragraph because said facts are indicated and implied from the other facts found in said

Report, and plaintiff further claims that the facts alleged in paragraph 5 are immaterial to the sole issue in this case whether Herbert N. Rice had a bona fide domicil in Navada Nevada at the time of securing this alleged divorce.

6. Plaintiff denies the allegation of paragraph 6 of the Remonstrance that the Report omits finding as a material fact the facts set forth in said paragraph because said facts are indicated and implied from the other facts found in said Report, and plaintiff further claims that the facts alleged in paragraph 6 are immaterial to the sole issue in this case of whether Herbert N. Rise had a bona fide domicil in Nevada at the time of securing his alleged divorce.

7. Plaintiff denies the allegations of paragraph 7 of the Remonstrance that the Report omits finding as a material fact the facts set forth in said paragraph because said facts are indicated and implied from the other facts found in said Report, and plaintiff further claims that the facts alleged in paragraph 7 are immaterial to the sole issue in this case of whether Herbert N. Rice had a bona fide domicil in Nevada at the time of securing his alleged divorce.

8. Plaintiff denies the allegations of paragraph 8 of the Remonstrance that the Report omits finding as a material fact the facts set forth in said paragraph because said facts [fol. 29] are found in paragraph 4 of said Report, and plaintiff further denies that the facts set forth in paragraph 8 of the Remonstrance are undisputed facts, and plaintiff further claims that said facts are immaterial to the sole issue in this case of whether Herbert N. Rice had a bona fide domicil in Nevada at the time of securing his alleged divorce.

9. The plaintiff denies the allegations of paragraph 9 of the Remonstrance that the Report omits to find as a material fact the facts set forth in said paragraph because said facts are found in paragraph 6 of said Report, and plaintiff further denies that the facts set forth in paragraph 9 of the Remonstrance are undisputed facts, and plaintiff further claims that said facts are immaterial to the sole issue in this case of whether Herbert N. Rice had a bona fide domicil in Nevada at the time of securing his alleged divorce.

B

1. Plaintiff denies the allegation that the claims of law set forth under B were made to the Referee, and further claims that none of the matters set forth under B of the Remonstrance are proper grounds for a Remonstrance because the defendant did not express to the Referee a desire to have her claims of law stated and because said Remonstrance does not allege that the Referee overruled defendant's claims of law, nor does said Remonstrance ask for a statement of the Referee's ruling upon any of said claims of law.

2. The claims of law, 1, 2, 3, 4, 6, 7 and 10 set forth in B of the Remonstrance are so clearly correct that it cannot be assumed that the Referee did not, so far as these were relevant considerations, apply them, and the Remonstrance does not state otherwise.

3. The claim of law 5 in B of the Remonstrance is not a claim of law, but is a conclusion of fact.

4. The claim of law 8 in B of the Remonstrance is an incorrect claim of law.

[fol. 30] 5. The claim of law 9 in B of the Remonstrance is an incorrect claim of law.

6. Plaintiff denies the allegation of the first paragraph following paragraph 10 that the Report is insufficient to present said claims of law to this court and plaintiff further claims that the facts requested in said paragraph are immaterial to the sole issue in this case of whether Herbert N. Rice had a bona fide domicil in Nevada at the time of securing his alleged divorce.

7. Plaintiff denies the allegation of the second paragraph following paragraph 10 that the Referee should also make a finding as to what evidence he considered, and plaintiff further claims that the matter contained in said paragraph is not proper ground for a Remonstrance because the Remonstrance does not allege that defendant expressed to the Referee a desire to have any claim stated with respect to such matter, nor does it appear what the defendant's claim is within respect to the matter set forth in said paragraph, nor does it appear that the Referee overruled any claim of defendant with respect thereto, and it can-

not be assumed that the Referee considered any evidence that was not properly before him, nor does the Remonstrance so state.

8. Plaintiff denies the allegation of the third paragraph following paragraph 10 that the Referee should make a finding as to how he interpreted the words "for an indefinite period" with reference to the testimony of Herbert N. Rice in the divorce proceeding in Nevada because the facts found in paragraphs 9 and 10 of the report indicate and imply that the Referee did not construe said words as being synonymous with the word "permanent."

C

Plaintiff denies the allegation that the facts set forth in C of the Remonstrance were admitted or undisputed and further pleads to paragraphs 1 to 6 inclusive of C of the Remonstrance as follows:

[fol. 31] 1. The facts set forth in paragraph 1 are found in paragraph 4 of the Referee's Report.

2. The facts set forth in paragraph 2 are found in paragraph 4 of the Referee's Report.

3. The facts set forth in paragraph 3 are found in paragraphs 5, 6 and 9 of the Referee's Report, or are indicated and implied from the facts found in said paragraphs of the Report.

4. The facts set forth in paragraph 4 are indicated and implied from the facts found in paragraphs 5 and 6 of the Referee's Report.

5. The facts set forth in paragraph 5 are found in paragraphs 6 and 9 of the Referee's Report.

6. The facts set forth in paragraph 6 are found in paragraph 7 of the Referee's Report.

The Plaintiff, by Ralph H. Clark, Samuel A. Persky, Her Attorneys.

IN SUPERIOR COURT OF NEW HAVEN COUNTY.

STIPULATION—Filed May 23, 1947

It is hereby stipulated and agreed by and between the parties hereto that the State Referee's report in the above entitled cause dated April 3, 1947 and on file may be corrected by adding thereto the following paragraph:

11. The State Referee to whom said case was submitted pursuant to stipulation on file gave consideration to all of the exhibits and the evidence submitted to him subject to such rulings thereon concerning admissibility as were made by the late Judge Pallotti during the trial of said case and made no rulings thereon himself.

[fol. 32] It is further stipulated and agreed that all of said rulings made by the late Judge Pallotti may be considered and have the same effect as though they had been made by said State Referee.

The Plaintiff, by Ralph H. Clark, Samuel A. Persky, Her Attorneys; The Defendants, by Pond, Morgan & Morse, Their Attorneys.

IN SUPERIOR COURT OF NEW HAVEN COUNTY

AMENDED REMONSTRANCE—Filed July 22, 1947

Since the filing of the defendants' remonstrance to the State Referee's Report in the above captioned matter, which said report is dated April 3, 1947, and is on file, a stipulation by the parties was filed wherein it is stipulated and agreed that said Report dated April 3, 1947 may be corrected by adding thereto the following paragraph:

"11. The State Referee to whom said case was submitted pursuant to stipulation on file gave consideration to all of the exhibits and the evidence submitted to him subject to such rulings thereon concerning admissibility as were made by the late Judge Pallotti during the trial of said case and made no rulings thereon himself."

"It is further stipulated and agreed that all of said rulings made by the late Judge Pallotti may be considered and have the same effect as though they had been made by said State Referee."

Therefore, Section D of the Remonstrance heretofore filed by the defendants is hereby amended so as to read as follows:

Section D—Said Report should not be accepted for the following reason, apparent upon its face:

[fol. 33] 3. The rulings of the Committee, stated in Paragraph 11 of the Report, were contrary to law, material and harmful to the defendant. Said rulings are as follows:

The plaintiff sought to introduce a certified, but not authenticated copy of the transcript of the record and testimony in a divorce action of *Rice* vs. *Rice* in the Second Judicial District of the State of Nevada, in and for the County of Washoe. Counsel for the defendant objected to the same as irrelevant and immaterial, but did not object because the transcript was not properly authenticated. After argument the court admitted said transcript as a full exhibit, and said exhibit, marked plaintiff's Exhibit A, will be found in Defendants' Exhibit I, which is a copy of all evidence, rulings, etc. contained in a certified transcript of the proceedings, and attached to the original Remonstrance filed in said cause, on pages 9, 10, 11, 12, 13, 14, 15, 16 and the first sentence on page 17.

This testimony was contrary to law, and was material and harmful to the defendants in that it gave the plaintiff an opportunity to produce evidence in repudiation of evidence given by Herbert N. Rice, in the Nevada court, which influenced the Referee in arriving at his decision, although there were no allegations of fraud in this plaintiff's complaint, and although the only issue in this case was the issue as to whether or not at the time the divorce was applied for, and at the time the divorce was granted, Herbert N. Rice was or was not domiciled in the State of Nevada.

Said testimony was also material and harmful to the defendant in having the Referee place the wrong interpretation upon the words "indefinite period," which in accordance with the Supreme Court of the United States means; as applied to an intent to reside, that no end to such time was then contemplated. *Williamson* vs. *Osentom*, 232 U. S. 619, where that court in speaking of domicile and especially in speaking of the words "for an indefinite time" states:

"The essential fact that raises a change of abode to a change of domicil is the absence of any intention to live

[fol. 34] elsewhere. Story on Conflict of Laws, Sec. 43, or as Mr. Dicey puts it in his admirable book 'The absence of any present intention of not residing permanently or indefinitely in' the new abode.

"In determining the meaning 'for an indefinite time' the court said 'We must take them to mean for a time to which the plaintiff did not then contemplate an end.' "

The court admitted testimony of Lillian P. Rice as against objection of the defendants, which said testimony is found in defendants' Exhibit I, a certified transcript of all evidence taken in the above captioned case, and attached to the original Remonstrance, as follows: (Record, page 40):

"Q. Just to give his Honor the background of the various places you lived until you finally moved to Woodbridge, will you recite for me beginning with the time you lived in the Winthrop Apartments, how long you lived there, where you moved to then, until you came to Woodbridge, giving us approximate dates.

"Mr. Morgan: Objected to as absolutely immaterial and having nothing to do with the issues in this case, whether she lived in Connecticut, except to show that she lived in Connecticut during all that time. It has no materiality in this particular case at all."

After considerable argument (Record, page 63):

"The Court: I will admit the question.

"Mr. Morgan: May I have an exception, and may I have an exception to all the testimony, so that I won't have to obect to each question as it is asked? May I have an objection and exception to each question that has to do with anything concerning the life between Mrs. Lillian P. Rice and Herbert N. Rice up until the day he left for Nevada? '

"The Court: We'll leave it this way. We'll leave it that the question is admitted and an exception be noted for Mr. Morgan, and it is understood that each question that Mr. Persky is about to ask is objected to and an exception noted in each question until such time that Mr. Morgan notifies [fol. 35] the Court that he is no longer taking any objections. Is that correct?

"Mr. Morgan. That is perfectly all right.

"The Court. Is that all right?

"Mr. Persky. Very agreeable. Because that will permit me to go on in an orderly manner without interruption."

So that all testimony given by Mrs. Rice on page 64 to 86 of defts. Ex. I inclusive, went in subject to objection and exception.

On Page 87 of the record, the following occurred:

"Mr. Morgan. Before proceeding, your Honor please, I want to know if I am right in my assumption that I have—that all the testimony of Lillian P. Rice that has gone in except the testimony that she was married to Herbert Rice in Haverhill, Massachusetts, on July 7, 1921, has gone in subject to as though I had objected to each question and you had ruled against me and an exception taken?

"The Court. Up to what date?

"Mr. Morgan. From the time—all of her testimony except the testimony that she was married to Herbert N. Rice at Haverhill, Massachusetts.

"The Court. On July 7, 1921.

"Mr. Morgan. July 7, 1921, and that they moved to New Haven—that all the other testimony that has gone in has gone in under a ruling of the Court that I might have an exception to each question same as though I had objected to each question all the way through.

"The Court. I didn't think you were holding out so far, buf if that was the understanding—

"Mr. Morgan. That was my understanding, and that is the reason I haven't objected right straight through.

"The Court. Then that is the ruling."

Said testimony was harmful to the defendant in that it permitted Mrs. Rice to bring in all matters concerning her marital relations with Herbert N. Rice, whose domicile in [fol. 36] Nevada was questioned, from the time of their marriage right down until the day he left for Nevada, brought in questions of property that were not in issue in this case, sought to contradict the testimony that Herbert N. Rice gave before the Nevada court, and was prejudicial to the interests of these defendants who were not shown to have any knowledge of any of the things testified to by this witness. This applies to all testimony from pages 64 to 86 inclusive, of the certified copy of the transcript in this case, being defendant's Exhibit I, attached to the original Remonstrance.

Testimony was admitted as to conversations had by the witness, Abraham Smith (Record, page 92) with Mr. Herbert N. Rice, which conversations the witness stated he had between January, 1943 and April, 1943.

"Q. What were the two dates between which these conversations occurred?

A. Between January, 1943 and April, 1943.

"Mr. Persky. Will you read the question before Mr. Morgan objected?

"Q. And did he say anything to you about his plans at the conclusion of the war?

"Mr. Morgan. I will object to that question as being too remote.

"The Court. I will admit the question.

"The Court. Exception noted.

"A. He said he intended to resume the automobile business.

"Q. Where?

A. In New Haven."

(Record, page 93.)

"Q. Did he talk to you about his home in Woodbridge?

A. Yes.

Q. And about his wife?

A. Yes.

"Mr. Morgan. Same objections.

"The Court. Exception noted.

"Q. And did he talk to you about why his wife was living in Woodbridge while he was in West Springfield?"

(Record, page 94.)

"Mr. Morgan. I am objecting to it as immaterial, totally immaterial, all that was said between January 1, 1943, and April 1, 1943.

[fol. 37] "Q. Now, will you proceed.

"Mr. Morgan. May I have an exception?

"The Court. Exception noted."

Thereafter, on page 94 of the record, defendants' Exhibit I, and page 95, testimony was admitted which should not have been admitted, and which was prejudicial to the defendant, and had no bearing on the question of Mr. Herbert N. Rice's domicile.

Testimony as to certain hotel records being read into the record were objected to (Record, page 118, Defendant's Exhibit I) being registration of Herbert N. Rice, and the plaintiff at Hotel Kimball in Springfield, Massachusetts.

"Mr. Persky. Well, that is the same objection we have had before, and I presume your Honor will make the same ruling.

"The Court. I will admit it.

"Mr. Morgan. Exception to each one of them. Put them in one at a time, will you?

"Mr. Persky. The hotel register of the Hotel Kimball for April 24, 1943—contains the following in the admitted handwriting of Herbert Rice—H. N. Rice and wife under the heading name. Under the heading address, subheading, street and number, appear the words Center Road. Under the subheading city and state of the general heading address appear the words Woodbridge, Connecticut. All that in the handwriting of Mr. Rice.

"Mr. Persky. The record of the hotel shows they checked in on April 24, 1943, at 2:32 P. M., and they checked out on April 25, 1943, at 4:27 P. M."

(Record, page 119, defendants' Exhibit I.)

"In the Hotel register of the Hotel Kimball for August 25, 1943, there appears thereon in the admitted handwriting of Mr. Herbert Rice the following under the heading name: Mr. and Mrs. H. N. Rice. Under the general heading address, subheading of street and number, Center Rd. Under the sub-[fol. 38] heading city and state, the words Woodbridge, Conn. In the final column under the heading room, in the handwriting admittedly not Mr. Rice's and unidentified, the figures 706. Mr. and Mrs. Rice checked into the hotel on August 25, 1943, at 1:29 P. M. and checked out on August 29 at 8:41 P. M.

"On the hotel register of the Hotel Kimball for March 11, 1944, I will ask your Honor to note that date because that date will become significant. It is the formal registration of the Hotel Kimball, March 11, 1944. There appears on this sheet in the admitted handwriting of Mr. Rice under the heading name, Mr. and Mrs. H. N. Rice. Under the general heading address, subheading, street and number, Center Road, and road is abbreviated to Rd. Under the heading address, subheading city and state, Woodbridge, Ct., the abbreviation of Connecticut is Ct. in this instance, and under the heading room, in handwriting admittedly not Mr. Rice's

but unidentified, the figures 865. The record shows they checked into the hotel on March 11, 1944, at 12:12 P. M., and that they checked out of the hotel on March 13, 1944, at 11:31 A. M.

"Mr. Morgan. March 13 or March 12?

"Mr. Persky. Checked in March 12—March 11, I should say, at 12:12 P. M. and checked out March 13 at 11:31 A. M.

"The Court. Is that 11:31 or 11:13?

"Mr. Persky. 11:31.

"Mr. Morgan. A. M.?

"Mr. Persky. A. M.

"Now, there are two more hotel registrations that I want to refer to, one is under date of March 25, 1943, and in that instance the hotel register indicates the registration and the name—in the handwriting of Mrs. Rice—

"Mr. Morgan. Mrs. what Rice?

"Mr. Persky. Mrs. Herbert N. Rice, Center Road, Woodbridge, Connecticut, Room 508, and the time of checking in was March 25 at 10:40 P. M. March 25, 1943, at 10:40 P. M., and checking out on March 26, 1943, at 12:28 P. M.

"Mr. Morgan. March what was that?

[fol. 39] "Mr. Persky: March 26.

"Mr. Morgan: What hour?

"Mr. Persky: 12:28 p. m.

"This, if your Honor Pleases, will be connected by testimony indicating that although Mrs. Rice's handwriting — on the register, that Mr. Rice spent the night with her at the hotel.

"The Court: In that Hotel Kimball?

"Mr. Persky: Yes, your Honor.

"Mr. Morgan: All of these are going in subject to *to* the same objection, I take it, your Honor Please, and same exception?

"The Court: Yes.

"Mr. Persky: The final registration is on the hotel register of the Hotel Kimball under date of March 20, 1943, and that registration is likewise in the handwriting of Mrs. Herbert N. Rice, indicating a registration as of Center Road, Woodbridge, Connecticut, and Room 608, and the record of the hotel shows that the checking in was on March 20—March 20, 1943, at 10:01 p. m., and the checking out on March 23, 8:16 a. m.—March 23, 1943, at 8:16 a. m.

"Mr. Morgan: 8:16?

"Mr. Persky: That's right, and the hotel records show that Mr. and Mrs. Rice occupied that room and it will be connected up by further testimony.

"Unless Mr. Morgan has further questions of these witnesses from Springfield, we are proposing to allow them to go back."

The court admitted against the defendants' objections and exceptions, Exhibit B, letter of December, 1942 (Record, page 126); Exhibit C, letter of December, 1942 (Record, page 131); Exhibit D, letter of January 13, 1943 (Record, page 1933); Exhibit E, letter of January, 1943 (Record, page 134); Exhibit F, letter of June, 1943 (Record, page 135); Exhibit H, letter of February 12, 1944 (Record, page 136), and the purpose for which they were offered by the plaintiff was as follows:

"Mr. Persky: I am offering the whole series of letters, your Honor please, along the same general lines as the oral [fol. 40] testimony of the witnesses from Springfield and Mrs. Rice's testimony as to the relationship between Mr. Rice and Mrs. Lillian Rice during this whole period in West Springfield as to the time of Mr. Rice's sudden disappearance from the scene, and subsequently apparently bobbing up in Reno, as bearing on the probability that he did or did not abandon his domicile in Connecticut as the law requires, and adopt, as the law requires, a new domicile elsewhere. All of this is part of the minute detail that goes to show the general picture and is the same line of testimony in a different form that was objected to before."

(Record, page 126.)

All of this testimony was wrongfully admitted, and was prejudicial to the defendants in that it sought to paint a picture of the harmonious household that existed between the plaintiff and Herbert N. Rice from 1942 up to the time he departed for Reno on March 19, 1944, and while introduced for the stated purpose of showing failure to abandon Connecticut domicile, was really for the purpose of influencing the court in the abandoning of Mrs. Lillian Rice, the plaintiff.

At the conclusion of Mrs. Lillian Rice's testimony, defendant made a motion to strike out all of that testimony, except that testimony to the effect that she was married to Herbert N. Rice in Haverhill, Massachusetts, on July 7, 1921, as being totally immaterial, and having nothing to do with the

issues in this case, which issues are solely as to whether or not, regardless of any other facts or circumstances, Mr. Rice was domiciled in the State of Nevada for a sufficient length of time to grant to that court jurisdiction to grant his divorce. That motion was denied and an exception to its denial was taken.

This was prejudicial to the defendants for the reason there was nothing in the testimony and nothing up to the time that the plaintiff's case was closed which could by any possibility be held to have had the plaintiff sustain the burden that was upon her to prove by a fair preponderance [fol. 41] of the evidence, that Herbert N. Rice was not domiciled in Nevada, but that he simply had a colorable domicile there.

The Defendants, by Pond, Morgan and Morse, Their Attorneys.

(Overruled Aug. 7, 1947)

In Superior Court of New Haven County

Plaintiff's Answer to Amended Remonstrance—Filed July 24, 1947

1. The plaintiff denies the allegations contained in Section D-3 as amended of the Remonstrance that the rulings of the Committee stated in Paragraph 11 of the Report were contrary to law, material and harmful to the defendant, because all of the evidence offered by the plaintiff, the admission of which is complained of in said amended Remonstrance, was offered by the plaintiff and was admitted by the Court solely on the ground that it had a bearing on the probability that Herbert N. Rice did or did not abandon his domicil in Connecticut, as the law requires, and adopt, as the law requires, a new domicil elsewhere, all of which appears in statement of counsel appearing on page 126 of the transcript of the evidence, rulings, etc. in said case.

The Plaintiff, by Ralph H. Clark, Samuel A. Persky, Her Attorneys.

[fol. 42] In Superior Court of New Haven County

Present, Honorable Edward J. Daly, Judge.

Lillian P. Rice, of Woodbridge, Connecticut,

vs.

Hermoine P. Rice, of Herlong, California, and Walter K. King, of West Haven, Connecticut, Administrator of the Estate of Herbert N. Rice, Deceased

Declaratory Judgment—August 7, 1947

This action by writ and complaint dated March 20, 1946 claiming a declaratory judgment ordering and decreeing that a decree of divorce granted on June 13, 1944 by the Second Judicial District Court of the State of Nevada in and for the County of Washoe in favor of Herbert N. Rice against Lillian P. Rice was a colorable one and did not dissolve the marriage relation between Lillian P. Rice and Herbert N. Rice, and that said Lillian P. Rice and said Herbert N. Rice were still husband and wife at the time of the death of said Herbert N. Rice on December 23, 1944, and that said Lillian P. Rice is now the widow of said Herbert N. Rice, came to this Court on the first Tuesday of April, 1946, and thence to the 25th day of April, 1946, when the defendants filed an answer to said complaint, and thence to the 14th day of January, 1947, when said case having been fully tried to the Court before the Honorable Francis A. Pallotti and briefs having been filed by counsel, and said Hon. Francis A. Pallotti having died on December 21, 1946 before rendering any decision or entering judgment in said case, a stipulation for reference of said case was filed and when the court, (Quinlan, J.) pursuant to the terms of said stipulation ordered that a complete transcript be made of all of the testimony and proceedings in said trial of said case and that said transcript, together with all depositions, exhibits admitted in evidence in the trial of said case and all briefs filed by counsel be referred to the Hon. John W. [fol. 43] Banks, State Referee, to be acted upon by him in the same manner as though said case had been originally referred to him under and pursuant to Sections 167 to 178 inclusive of the Connecticut Practice Book, and that said Hon. John W. Banks report make to this Court, and thence to the 5th day of April, 1947, when the report of Hon. John

W. Banks, State Referee, was filed with the court, and thence to the 28th day of April, 1947, when the Hon. John W. Banks; State Referee, filed an amendment to his report, and thence to the 29th day of April, 1947, when the defendants filed a remonstrance to said report, and thence to the 2nd day of May, 1947, when the plaintiff filed an answer to said remonstrance and thence to the 23rd day of May, 1947, when the parties filed a stipulation correcting and adding to said report of said State Referee filed on the 5th day of April, 1947, and thence to the 22nd day of July, 1947, when the defendants filed an amended remonstrance, and thence to the 24th day of July, 1947, when the plaintiff filed an answer to said amended remonstrance, and thence to the present time when the parties appeared and were at issue to the Court on said remonstrance and said amended remonstrance as on file.

The Court having heard the parties finds said remonstrance and amended remonstrance untrue and insufficient and overrules the same and accepts said report as amended and corrected and therefore finds the issues for the plaintiff.

Whereupon it is adjudged and decreed as a declaratory judgment of the rights of the parties, that the decree of divorce granted on June 13, 1944, by the Second Judicial District Court of the State of Nevada in and for the County of Washoe, in favor of Herbert N. Rice and against Lillian P. Rice, was a colorable one and did not dissolve the marriage relation between said Lillian P. Rice, the plaintiff in the present action, and said Herbert N. Rice, and that said Lillian P. Rice and said Herbert N. Rice were still husband and wife at the time of the death of said Herbert N. Rice on December 23, 1944, and that said Lillian P. Rice, the plaintiff in the present action, is now the widow of said Herbert N. Rice.

[fol. 44] It is further adjudged and decreed that no costs shall be taxed in favor of either party.

Edward J. Daly, Judge.

IN SUPERIOR COURT OF NEW HAVEN COUNTY

DEFENDANTS' APPEAL—Filed September 9, 1947

In the above entitled case, the defendants appeal to the Supreme Court of Errors, and state:

1. They are aggrieved by the decision of the court in accepting the report of the State Referee and entering judgment thereon on August 7, 1947, because the facts and subordinate facts set forth in said report were insufficient to support the conclusion reached by said State Referee;

2. They are aggrieved by the decision of the court on questions of law arising from the trial, and the decision of the court in over-ruling defendants' Remonstrances to said report of said State Referee, and entering judgment therein for the plaintiff;

3. They are aggrieved by the decision of the court in entering judgment for the plaintiff on said report because there was no evidence produced by the plaintiff, either before the State Referee or before the Court sufficient to justify any judgment for the plaintiff; and

4. That upon the evidence and upon the facts and subordinate facts stated in the report of said State Referee, judgment should have been entered for the defendants.

The Defendants, by Pond, Morgan and Morse, Their Attorneys.

I certify that the foregoing appeal was filed on the 9th day of September, 1947; that the defendants have paid the entry fee of the Supreme Court of Errors; that Daniel D. Morgan is recognized in the sum of One Hundred Fifty ($150.00) Dollars conditioned that the defendant shall [fol. 45] prosecute said appeal to effect and pay all costs therein if they shall fail to do so; and said appeal is hereby allowed.

Thomas J. McDermott, Asst. Clerk.

[Filed: September 9th, 1947]

IN SUPERIOR COURT OF NEW HAVEN COUNTY

MOTION FOR CERTIFICATION OF RECORD—Filed September 9th, 1947

In the above captioned cause the defendants respectfully move the court as follows:

1. That the court cause to be certified as a part of the record to the Supreme Court of Errors, the report of said State Referee, which report is dated April 3, 1947, together with any amendments thereto.

2. That all stipulations entered in said case be certified by the court as a part of said record.

3. That the court certify what evidence should be made a part of the record to the Supreme Court of Errors in the event that counsel for said parties are unable to agree as to what evidence shall be so certified, and

4. That the court certify whether only the evidence set forth in the defendants' Remonstrances and Amended Remonstrances be printed as a part of said record, or whether all the testimony submitted to the Referee, together with all rulings thereon should be certified and printed as a part of the record to the Supreme Court of Errors in the event that counsel cannot agree as to what evidence should be so certified.

5. Having in mind that the entire transcript of evidence is made defendants' Exhibit 1 and attached to the defendants' Remonstrances, that the court certify all of said Remonstrances and Amended Remonstrances as a part of the record to go to the Supreme Court of Errors, and that all Exhibits in said case be forwarded to the Supreme Court of Errors.

The Defendants, By Pond, Morgan and Morse, Their Attorneys.

[fol. 46] In Superior Court of New Haven County

Assignments of Error—Filed October 8, 1947

The Court erred:

1. In overruling Paragraphs one to nine inclusive, Part A of Defendants' Remonstrance, and accepting the report and amended report of the State Referee, and rendering judgment for the plaintiff thereon.

2. In overruling the claims of law of the defendants set forth in Paragraphs one to ten inclusive, Part B of defendant's Remonstrance, and in accepting the report of the State Referee and rendering judgment for the plaintiff thereon.

3. In overruling Paragraphs one to six inclusive, Part C of the defendants' Remonstrance, and accepting the report and amended report of the State Referee, and rendering judgment in favor of the plaintiff thereon.

4. In overruling Paragraphs one and two, Part D of defendants' Remonstrance and Paragraph 3, Part D of defendants' amended Remonstrance, and accepting the report and amended report of the State Referee and rendering judgment for the plaintiff thereon.

The defendants, By Pond, Morgan and Morse, Their Attorneys.

In Superior Court of New Haven County

Judge's Certification

The evidence in the above-entitled case including the exhibits, and as certified by the official stenographer and by Hon. John W. Banks, State Referee, is hereby certified and made part of the record on appeal.

Daly, Judge.

[New Haven County, Superior Court filed Oct. 15, 1947, William A. Bree, Clerk.]

[fol. 47] DEFENDANTS' EXHIBIT 1

IN SUPERIOR COURT OF NEW HAVEN COUNTY

November 19, 1946.

APPEARANCES:

For the Plaintiff: Ralph H. Clark, Esq., Messrs. Stoddard, Persky, Eagan & Cobey. By Samuel Persky, Esq.

For the Defendants: Messrs. Pond, Morgan & Morse, By Daniel D. Morgan, Esq.

All the Evidence and Rulings Certified by the Court

OFFER OF PLAINTIFF'S EXHIBIT "A"

Mr. Persky: I am offering the transcript of record and testimony in the divorce action of Rice and Rice, in the Second Judicial District of the State of Nevada, in and for the County of Washoe.

Mr. Morgan: Object to that as irrelevant and immaterial.

[Omission, see Transcript, pp. 1-8.]

The Court: Well, I think it is sufficient you present this to the Court, Mr. Persky, so that I will admit the transcript, and it may be marked Plaintiff's Exhibit A.

Mr. Morgan: May I have an exception to the ruling of the Court?

The Court: An exception may be noted.

Mr. Morgan: On the ground it is absolutely immaterial insofar as any issues in this case are concerned.

The Court: Exception noted.

[The transcript of testimony referred to was received in evidence and marked Plaintiff's Exhibit A.]

Mr. Persky: If your Honor will indulge me, I would like to read Plaintiff's Exhibit A.

[fol. 48] [Mr. Persky read Plaintiff's Exhibit A to the Court as follows:]

"No. 82,213, Department No. 1, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe. Herbert N. Rice, plaintiff, vs. Lillian P. Rice, defendant. Be it remembered, that the above entitled action came on regularly for trial in Department No. 1 of the above

entitled Court, on Tuesday, the 13th day of June, A. D. 1944, at the hour of 9:55 o'clock A. M. at said day, before Hon. William McKnight, Judge of said Court, sitting without a jury. Plaintiff was present in person, and represented by his attorney Messrs. Ayres, Pike and McLaughlin. Defendant did not appear. J. A. Callahan, reporter pro tempore of said Court, was present and acting as such, and thereupon the following proceedings were had, and testimony taken, to wit:

The Court: This is case No. 82,213—*Rice* vs. *Rice*.
Mr. McLaughlin: Plaintiff is ready, your Honor.

The Court:

Q. Have you examined the record in this case, Miss Clerk?
Deputy Clerk Elsworth: A. I have, your Honor.
Q. When?
A. Before coming into Court.
Q. Has there been any answer, demurrer or other pleading filed on behalf of the defendant?
A. No appearance, your Honor.
The Court: You will therefore enter the default of the defendant for failing to demur, answer or otherwise plead to plaintiff's complaint within the time required by law.
You may proceed.

Mr. McLaughlin: Will you take the stand, Mrs. Matson, please.

Testimony of Mrs. Laura Dell Matson, who was first duly called and sworn as a witness on behalf of the plaintiff, testified as follows, to wit:

Direct examination.

By Mr. McLaughlin:

Q. State your name, please.
A. Mrs. Laura Dell Matson.
Q. Where do you live?
A. 702 Lake Street, Reno, Washoe County, Nevada.
[fol. 49] Q. You have been a resident of Washoe County, Nevada, for how many years?
A. Thirty-five years.
Q. You know the plaintiff in this action, Herbert N. Rice?
A. Yes, sir.

Q. Do you see him in the courtroom?
A. Yes.
Q. When did you first see Mr. Rice in Reno, Nevada?
A. March 23, 1944."

Mr. Persky: May I ask your Honor to bear in mind March 23. It is significant and an interesting date, the date when Mrs. Matson, who, as it was developed, was his landlady, first saw Mr. Rice in Reno, Nevada.

"Q. Has he been residing at your home?
A. Yes, he has.
Q. How frequently have you seen him in Reno, Nevada, since March 23, 1944?
A. Every single day."

Mr. Persky: Again the 23rd of March, the day Mrs. Matson first saw him. This date will come up again.

"Q. At your home?
A. Yes.

Mr. McLaughlin: That is all.
The Court: That is all. You may be excused.

Testimony of HERBERT N. RICE, who was first duly called and sworn as a witness on behalf of himself, testified as follows, to wit:

Direct examination.

By Mr. McLaughlin:

Q. State your name.
A. Herbert N. Rice.
Q. You are the plaintiff in this action?
A. Yes.
Q. Lillian P. Rice, the defendant, is what relation to you?
A. Wife.
Q. When and where were you married to the defendant?
A. At Haverhill, Massachusetts, July 7, 1921.
Q. You are still husband and wife?
A. Yes.
Q. When did you come to the State of Nevada to reside?
A. March 22nd or 23rd, 1944."

The Court: Will you read again the response of Mr. Rice as to when they were married in Haverhill, Massachusetts.

Mr. Persky: July 7, 1921, as alleged in the complaint, your Honor.

The Court: All right, sir.

[fol. 50] "Q. The 23rd of March, 1944?

A. Yes.

Q. Have you been actually, physically present in the State of Nevada each and every day since March 23, 1944?

A. Yes.

Q. You have been employed here?

A. Yes.

Q. When you came to this State to reside, was it your intention to reside here for an indefinite period?

A. Yes."

[Omission, see Transcript, pp. 12-14.]

"Q. Has that intention been continuously with you since that time?

A. Yes.

Q. Is it your present intention?

A. Yes.

Q. Are there any minor children, the issue of the marriage?

A. No, sir.

Q. Any community property within the jurisdiction of this Court?

A. No, sir.

Q. You had alleged in your complaint that since your marriage the defendant treated you with extreme cruelty which has seriously injured your health and destroyed your happiness and rendered further cohabitation unendurable and compelled you to separate. Is that true?

A. Yes.

Q. When did that cruelty start?

A. It started in 1924."

[Omission, see Transcript, p. 14.]

"Q. And this continued to the time of your separation which took place when?

A. The day after Labor Day 1942."

[Omission, see Transcript p. 15.]

"Q. And you have lived separate and apart since that time?

A. Yes.

Q. Will you briefly explain to the Court of what that cruelty consisted?

A. She originally started out with accusing me of going out with every woman I came in contact with, and I was an automobile salesman at the time, and my work took me from a man's office to his home, and I was constantly accused of going out and running around with every one of my customers.

Q. On any occasion did she ever throw anything at you?

A. I would see every piece of silverware and every dish removed from the table and hurled at my head.

Q. On certain occasions, would she get up at night?

A. Yes. And one occasion she got up early in the morning, and jumped in the pond, and it is not over five feet deep, and there is no possibility of drowning in it, and I pulled her out and wrapped her up in blankets; and after all of those things I would get up and go to work in the [fol. 51] morning and thank God it was morning so I could go to work.

Q. What effect, if any, did her treatment have upon your health and happiness?

A. It ruined my happiness and I commenced to lose sleep and I could not work and my work commenced to suffer. It made me very nervous and upset.

Q. And you actually gave up your business and moved away from that community on account of your wife's treatment of you?

A. Yes.

Q. There is no possibility of being reconciled with the defendant?

A. No.

Q. What is her business?

A. She runs a day school for pre-school age children.

Q. And she is financially independent?

A. Yes, and the last time I had a communication from her, she told me the school was a gold mine.

Q. There is no possibility of a reconciliation with the defendant?

A. None.

Q. You gave her no cause for her conduct?
A. None.

Mr. McLaughlin: That is all.
The Court: That is all. You may be excused.
Mr. McLaughlin: That is our case.

DECREE OF DIVORCE

The Court: It is ordered, adjudged and decreed that the bonds of matrimony heretofore and now existing between Herbert N. Rice, plaintiff, and Lillian P. Rice, defendant, be, and the same hereby are, dissolved, and each of said parties is restored to the status of a single person on the ground of extreme cruelty on the part of the defendant.

The testimony will be transcribed and filed."

Mr. Persky: Mr. Clerk, may I have the deposition of John T. McLaughlin?

The Clerk: I ask your Honor's permission to open these depositions filed in this case.

The Court: You may open them. Is he attorney for the

Mr. Persky: He was attorney for the plaintiff in that action and this deposition was taken at the instance of the defendant in this case, but I propose to offer it as part of our case.

You have had a copy of this, so I don't think you care to examine it now.

[fol. 52] Mr. Morgan: You can go ahead and read it, if you want to.

Mr. Persky: Your Honor pleases, I think before I read this it should be marked as an exhibit.

Mr. Morgan: I think it is all before the Court now, your Honor please, as a deposition. I don't think it has to be

Mr. Persky: It doesn't need to be marked as an exhibit?

The Court: I don't think so.

Mr. Persky: Very well.

[The deposition of John T. McLaughlin, of the City of Reno, County of Washoe, State of Nevada, was read as follows by Mr. Persky:]

"*Lillian P. Rice* vs. *Hermoine P. Rice, et al.*, State of Connecticut, Superior Court, New Haven County, United States of America. I, John T. McLaughlin, of the City of

Reno, County of Washoe and State of Nevada, of lawful age, being duly cautioned and sworn, depose and testify as follows:

"Questions by Mr. Furrh:

"Q. State your name.
A. John T. McLaughlin.
Q. Where do you reside?
A. 775 California Avenue, Reno, Nevada.
Q. What is your occupation?
A. Attorney-at-law.
Q. Where do you practice law?
A. 309 First National Bank Building, Reno, Nevada.
Q. Were you acquainted with Herbert N. Rice?
A. I was.
Q. When did you become acquainted with Herbert N. Rice?
A. On March 23, 1944.
Q. What were the circumstances under which you became acquainted with him?
A. He arrived at my office and retained me to represent him in a divorce action.
Q. Did you interview him on that occasion?
A. I did.
Q. Where did the interview take place?
A. At 309 First National Bank Building, Reno, Nevada.
Q. Who was present?
A. Mr. Rice and myself.
Q. Do you recall any conversation that you and Mr. Rice had on that occasion concerning his residence?
A. Mr. Rice——
Q. Answer that question by yes or no.
A. Yes.
Q. What conversation was had?

Mr. Robinson: Now then, just for the purpose of the record, we object to any testimony or conversation upon the ground that the testimony is incompetent under Section [fol. 53] 8966 of the Nevada Compiled Laws, 1929, and on the further ground that it is hearsay.

A. Mr. Rice told me that he had been residing in West Springfield, Massachusetts, and that his wife resided in Connecticut and that he wanted a divorce. He did not know whether or not his wife would appear. I explained that it

would be necessary to reside here for a period of 43 days before our courts would accept his complaint in a divorce action, and that we had to effect service upon his wife, if she did not cooperate."

[Omission, see Transcript, p. 20.]

"A. [Continuing]: At this particular time I also informed him that in the event a default decree was granted in the case, it *would* probably would not be recognized in the State of Connecticut. He informed me that it was his intention not to return to the State of Connecticut, but to remain here indefinitely. It was his intention to secure some type of employment here, inasmuch as he had been engaged in war work in Springfield, Massachusetts.

Q. Was that the extent of the conversation on that occasion?

A. That was.

Q. Did you ever have any other conversation with Mr. Rice concerning his residence?

A. I——

Q. Answer that yes or no.

A. Yes.

Q. When did that conversation take place?

A. That conversation took place shortly before June 13, 1944, a few days previous to the entry of the decree in this matter.

Q. Where did this conversation take place?

A. At 309 First National Bank Building, my office.

Q. Who was present?

A. I was.

Q. You mean you and Mr. Rice were present?

A. Yes.

Q. What was the nature of this particular conversation?

Mr. Robinson: Same objection.

A. Mr. Rice informed me that he had made application for employment at the United States Employment Office, and that they were recruiting help for the Army Ammunition Base at Herlong, California, a short distance over the Nevada line. He wanted to know whether it was perfectly all right to take such a position. He wanted to maintain [fol. 54] his residence in the State of Nevada. I explained to him that it was perfectly all right to do so. On that particular occasion he stated that it was his intention to continue

to reside here and after his marriage would probably purchase some property for the purpose of establishing a guest house for children. He requested me to keep my eyes open for a good location.

Q. Was that the extent of the conversation on that occasion?

A. On that particular occasion it was the substance of the conversation.

Q. Did you ever have any other conversation with Mr. Rice concerning his plans for the future? Answer that question yes or no.

A. Yes.

Q. Do you recall when that conversation took place?

A. After he went up to Herlong and shortly before his death.

Q. Where did the conversation take place?

A. In my office.

Q. What was said on that occasion?

A. He was accompanied by the present Mrs. Rice, whom he married shortly after the divorce, and they were very much interested in returning from Herlong to Nevada, if they could get a suitable place to operate, a place for children, particularly catering to the divorce crowd.

Mr. Robinson: I make the same objection to this question.

A. He was particularly interested in making an investment in a house, but if it could not be found, he would be interested in purchasing some land and erect a guest house for children.

Q. By that you mean a guest house for divorcees with their children?

A. That is right.

Q. Was that the last conversation you had with Mr. Rice?

A. Yes.

The Counsel: That is all."

[Omission, see Transcript, pp. 22-25.]

[Mr. Persky continued reading from the deposition as follows:]

"Cross-examination on the part of the Plaintiff by Mr. Robinson:

Q. Mr. McLaughlin, on May 12, 1944, you sent a letter to Mrs. Lillian P. Rice?

A. I did.

Q. I wish to show you that letter, and ask you if this is [fol. 55] the letter.

A. That is right.

Q. Is that your signature?

A. That is my signature.

Mr. Robinson: I offer this letter in evidence, and ask that it be attached to the deposition."

Mr. Persky: May I at this point——

Mr. Morgan: May I see the letter? We haven't got a copy of the letter.

Mr. Persky: It should be attached to the deposition somewhere.

I am showing it to Mr. Morgan before I read it, your Honor pleases.

Mr. Morgan: I will object to this letter if it is offered as a part of the deposition on the ground that it is absolutely immaterial insofar as this particular action is concerned. It is a letter from Ayers, Pike and McLaughlin, the lawyers there, to Lillian Rice.

[Omission, see Transcript, pp. 26-35.]

The Court: Gentlemen, I have ruled, and we will proceed. I have ruled the letter would not be admitted, and Mr. Persky asked for an exception and an exception may be noted.

Mr. Persky: Now, I will try to find the spot where they no longer refer to that letter and commence again with the cross-examination.

[Mr. Persky continued reading the deposition as follows:]

"Q. Shortly before the default decree was entered in favor of Mr. Rice in the Nevada divorce proceeding, you were advised that Mrs. Rice was willing to enter a voluntary appearance?"

Mr. Morgan: Where are you reading from?

Mr. Persky: From page 5. I have tried to skip anything——

Mr. Morgan: Oh, I see.

Mr. Persky: You see that? I tried to skip all reference to the letter which his Honor has ruled inadmissible.

"Q. Shortly before the default decree was entered in favor of Mr. Rice in the Nevada divorce proceeding, you

were advised that Mrs. Rice was willing to enter a voluntary appearance?

A. Mr. Sidney Robinson contacted me and informed [fol. 56] me that he had heard from Mrs. Rice but had no authority to enter the appearance.

Q. Well, Mr. McLaughlin, is it not a fact that you were advised the day before, or on the day this default decree was entered, by Mr. Summerfield or by me, that Mrs. Rice was willing to enter a voluntary appearance for return of that deed? Isn't that a fact?

A. No, I wasn't advised.

Q. You weren't advised of that fact?

A. No. I might explain that Mr. Lester D. Summerfield called, shortly after Mrs. Rice was served with the complaint and after I had written the letter——"

[Omission, see Transcript, p. 37.]

A. (Continuing:) —and after I had written the letter that has been previously introduced in evidence, and stated that Mrs. Rice contemplated appearing in the action; that he subsequently advised me that she had withdrawn the power of attorney. That Mr. Sidney Robinson called me and said that he was likewise acting for Mrs. Rice and had a power of attorney, and shortly before the default decree could have been entered, he advised me that the power of attorney had been revoked. Mr. Robinson then told me, either on the afternoon or on the following morning after the decree had been entered, that the power of attorney had been reinstated, and I then suggested that an appearance be made nunc pro tunc. The matter was then dropped.

The Counsel: That is all."

Mr. Persky: That ends the deposition of Mr. McLaughlin.

The Court: Are there other depositions?

Mr. Persky: There are, but none that we are offering at this time.

The Court: Well, in that file besides Mr. McLaughlin's, there are others, is that right?

Mr. Persky: Yes.

Mr. Morgan: I will introduce those other depositions.

The Court: That is taken in now as evidence.

Mr. Persky: Yes, your Honor. I take it Mr. Morgan will probably eventually introduce the other depositions in this group.

[fol. 57] Mr. Morgan: I will.

The Court: That is not marked as an exhibit. It is just put in as evidence.

Mr. Persky: The only purpose I had in marking it as an exhibit is because we were taking only a part of a group of depositions, but I think it is quite clear on the record, and if Mr. Morgan does not introduce all of them, we can separate those that he does not introduce.

Mr. Morgan: I have not the slightest objection, if your Honor please, to having that deposition of McLaughlin's marked Plaintiff's Exhibit B.

Mr. Persky: I don't care, it is in there and it has been read.

The Court: Now, I think you better leave it as it is, except the stenographer may note the time when the deposition was read in court of Mr. McLaughlin, and was read to the Court and into the record.

Mr. Persky: Your Honor pleases, I am prepared to put Mrs. Rice on the witness stand.

The Court: We had better have a short recess.

[The deposition of John T. McLaughlin was read at 10:55 a. m.]

[A brief recess was taken at this time.]

Lillian Pauline Rice, the plaintiff, called as a witness on her own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Persky:

Q. Mrs. Rice, it is necessary that all of us hear what you say, and the acoustics in this room leave much to be desired, so will you endeavor to keep your voice up so we can hear you?

A. Yes.

Q. You were married to Herbert when and where?

A. Haverhill, Massachusetts, on the 7th of July, 1921.

Q. Where did you first come to live?

A. New Haven, Winthrop Apartments on Chapel Street.

Q. Just to give his Honor the background of the various places you lived until you finally moved to Woodbridge, will [fol. 58] you recite for me beginning with the time you lived in the Winthrop Apartments, how long you lived there, where you moved to then, until you came to Woodbridge, giving us approximate dates.

Mr. Morgan: Objected to as absolutely immaterial and having nothing to do with the issues in this case, whether she lived in Connecticut, except to show that she lived in Connecticut during all that time.

[Omission, see Transcript, pp. 40-51.]

The Court: Of course, this question was only in regards, as I understand it, to the time she left Haverhill, Massachusetts, and came here to the Winthrop Apartments here in New Haven.

Mr. Morgan: I am willing to admit he was domiciled in New Haven before he went to Springfield, or if they weren't, when he was in Springfield.

[Omission, see Transcript, pp. 51-54.]

The Court: Let's get back to the first question. Are you going back to when she left Haverhill?

Mr. Persky: Yes, and I propose to show, briefly in the early days and more specifically from 1942 on, all that these people did together in order to point to your Honor that their residence and domicile, both of them, Mr. Rice's too continued in Connecticut to the date of his death, and that he never acquired a residence in Nevada.

Mr. Morgan: Your Honor please, I am willing to admit that Herbert N. Rice was domiciled in the State of Connecticut. I am willing to admit that up until the time that he formed his intention of making Nevada his permanent home, that he was not domiciled in Nevada, unless and until he made up his mind that definitely Reno, Nevada, was to be his permanent home, and that he intended to remain there. But all this other stuff what has to do with domicile in Connecticut up to the time that he left for Nevada, we aren't questioning it, and there is no need of going in and wasting the time of a lot of witnesses for the

purpose of showing that at one time Herbert N. Rice was domiciled in the State of Connecticut.

[Omission, see Transcript, pp. 55-58.]

[fol. 59] The Court: That is just the matter I was bringing up, Mr. Persky, when I started when the objection was made, and when I said perhaps I was assuming too much, it was in regard to whether you wanted to show that they were married in Haverhill, Massachusetts, on July 7, 1921. Now, Mr. Morgan said that is admitted, and then you wanted to show what she did from that time up to the time she moved to New Haven. That was——

Mr. Persky.

[Omission, see Transcript, pp. 58-59.]

The Court: Let's go back to the original question.

[The question was read.]

The Court: That's what Mr. Morgan objected to.

[Omission, see Transcript, pp. 59-62.]

The Court: Mr. Persky wishes to prove, and there is something he has brought out now with this present—both of them, as I understand it, never lost their domicile after they came back after the wedding in Haverhill, Massachusetts, in 1921, and came to New Haven.

Is that correct?

Mr. Persky: That's right, and I want to prove that.

Mr. Morgan: We'll agree they had their domicile——

[Omission, see Transcript, pp. 62-63.]

Mr. Morgan: May I have an exception.

[Omission, see Transcript, p. 63.]

The Court: We'll leave it this way. We'll leave it that the question is admitted and an exception may be noted for Mr. Morgan, and it is understood that each question that Mr. Persky is about to ask is objected to and an exception noted in each question until such time that Mr. Morgan notifies the Court that he is no longer taking any objections.

Is that correct?

Mr. Morgan: That is perfectly all right.

[Omission, see Transcript, p. 63.]

[fol. 60] Direct examination.

By Mr. Persky (Continued):

Q. Immediately after your marriage you went into the Winthrop Apartments in New Haven?

A. Yes, I did.

Q. You stayed there how long?

A. About two months.

Q. Then you moved where?

A. To George Street.

Q. You stayed there how long?

A. About a month.

Q. Then——

A. We went to Gibbs Street to an apartment, and from there we moved to Third Street in Hamden.

Q. Those last two places were in Hamden?

A. The last place was in Hamden, yes. The next place was Beacon Street, and the next street was Concord Street in Hamden. The fourth place was Norton Street in New Haven, and then we moved to Seymour Road in Woodbridge and lived there two years, and then moved to Center Road and lived with Mr. and Mrs. Elmer Chase for one year, and then we moved into this remodelled barn we now occupy and own.

Q. That is where you are now living?

A. That is where I am now living.

Q. You moved into that place in about 1930?

A. Yes.

Q. And in all these places you have enumerated from 1931, the middle of July, shortly after the first part of July, 1921, until the day after Labor Day in 1942 Mr. Rice was living with you physically present in all of these places as abode; is that right?

A. Yes.

Q. At the time of your marriage Mr. Rice gave you a wedding gift of some real estate?

A. Yes.

Mr. Morgan: How can this be material?

The Court: Just a moment. What is that——

Mr. Morgan: How can that be material?

[Omission, see Transcript, pp. 65-66.]

The Court: I will admit it.

Mr. Morgan: I am already saved by an exception.

The Court: Yes.

Mr. Persky: We are assuming that.

Mr. Morgan: Yes, but—All right.

The Court: Proceed.

Mr. Persky: What was the question, and if there was any answer, what was the answer?

[The question and answer were read.]

[fol. 61] By Mr. Persky:

Q. That real estate was——

A. That was at Silver Lake, New Hampshire.

Q. That real estate was subsequently sold?

A. That was sold——

Q. Yes or no?

A. Yes.

Q. And without going too minutely into the history, the money that came out of that real estate in the interim—did the proceeds of that real estate finally go into the home you are now occupying in Woodbridge?

A. Yes, it did.

Q. Now, at the time that that was purchased, the Woodbridge property, there was no dwelling on the place, was there?

A. No.

Q. Is there a dwelling on there now?

A. Yes.

Q. Was that dwelling originally on another plot of land?

A. Yes, it was.

Q. Who owned that other plot of land?

A. Mr. Elmer Chase.

Q. What was that building when it was on the first plot of land.

A. It was an old barn.

Q. Now, you and Mr. Rice acquired that old barn?

A. Yes, through labors we gave Mr. Chase.

Q. You and Mr. Rice worked for Mr. Chase?

A. Yes.

Q. Doing some work in exchange for which you got that old barn?

A. Yes.

[Omission; see Transcript, pp. 67-68.]

By Mr. Persky:

Q. How was that barn moved over to its present location on this property you are now occupying?

A. Mr. Rice and I hired some jacks and some rollers and we jacked the four corners of the barn up and put the rollers under it and with a truck that Mr. Rice had in his business we pulled it across to its present location after Mr. Rice and I dug the cellar.

Q. Did I understand you to say that you and Mr. Rice dug the cellar?

A. Yes, indeed.

Q. You did some of the digging?

A. Yes, indeed.

Q. You did some of the work in moving the place, moving it over?

A. I drove the truck.

Q. After it was placed on the foundation in the cellar you had to dig, was the place remodelled?

A. Yes, it was remodelled.

Q. By whom?

A. By Mr. and Mrs. Rice.

Q. You did some of the work?

A. I did all the designing and all the planning and did [fol. 62] most of the inside work with Mr. Rice.

Q. The inside work? You mean the decorating?

A. The decorating——

Q. And carpentry?

A. Yes.

Q. Now, at the time you were married to Mr. Rice what was he doing for a living?

A. He was an automobile salesman for Mr. Ferguson, of Ferguson Motors.

Q. He was employed by him as an automobile salesman?

A. That's right.

Q. And how long did he continue to be employed as an automobile salesman?

A. I think about five years.

Q. To about 1926, would you say?

A. I would think so.

Q. Then he left his position?

A. Yes.

Q. And what did he go into then?

A. He was branch manager for the Paige Jewett.

Q. How long did he stay with them?
A. About two years.
Q. Bringing us down to about 1928?
A. Yes.
Q. Then what did he go into?
A. He went into business with Mr. Belarsi.
Q. What kind of business?
A. Nash dealer.
Q. He became a Nash dealer?
A. Yes.
Q. He became associated with Mr. Belarsi?
A. Yes.
Q. Spell that for the stenographer, please.
A. I think it is Belarsi.
Q. How long did he continue to be associated with Mr. Belarsi as a Nash dealer?
A. About two years—I believe two years.
Q. And then what happened? I mean, was there a change of association then?
A. Yes, Mr. Belarsi sold five cars——
Q. I don't want the details. Mr. Belarsi left the firm?
A. Yes.
Q. Did Mr. Rice acquire the Nash Agency?
A. Yes, with Mr. York.
Q. What is Mr. York's first name?
A. Charles.
Q. Is he present in the courtroom?
A. Yes.

Mr. Persky: Will you stand up, Mr. York?

Q. Is this the gentleman?
A. That is Mr. York.
Q. He continued in business as a Nash dealer with Mr. York from then on until when?
A. Until 1942.
Q. Now, in 1942 what happened to that business and why?
A. He had to close that business because there were no new cars and no used cars to sell, and they couldn't continue.

Mr. Morgan: I will object to this testimony on another ground, that it has not been shown she was interested in the business, and whatever she is testifying to now must be based on hearsay unless she was a part of the business and

was in the business office to know why they closed the shop.
[fol. 63] Mr. Persky: Or, may we add, unless Mr. Rice told her.

Mr. Morgan: Yes, unless Mr. Rice told her.

The Witness: I often helped Mr. Rice in his office——

The Court: Did Mr. Rice tell you these things?

The Witness: Yes, and I often——

The Court: Did you keep any books?

The Witness: I beg your pardon?

The Court: Did you have any books?

The Witness: Yes, Mr. York kept the books. I often helped Mr. Rice in his business, too.

The Court: Any objection now, Mr. Morgan?

Mr. Morgan: Well I the objection for which I already have an exception that it is immaterial. That is the only thing.

The Court: Are you still objecting?

Mr. Morgan: All this testimony, as I understand it, is going in subject to my objection and exception.

Mr. Persky: That's what we understand.

The Court: That is right.

Mr. Persky: All right.

The Court: And you still are working under that rule?

Mr. Morgan: Yes, I understand we are.

The Court: All right.

By Mr. Persky:

Q. Now, Mrs. Rice, in 1942 there was a war on this country; is that right?

A. That is right.

Q. And as a result of there being no automobiles, new automobiles, there were none for the Nash Agency to sell?

A. That is right.

Q. And he had exhausted his supply of old automobiles?

A. That is right.

Q. Therefore, there were no old automobiles to sell?

A. That is right.

Q. And that caused the suspension of that business?

A. —.

[Omission, see Transcript, p. 73.]

By Mr. Persky:

Q. Now, Mrs. Rice, at the time that this business was suspended, did it have any equipment, tools, and other material [fol. 64] used in its business?

A. Yes.

Q. What happened to that?

A. Well, part of it was stored in our house and the other part was loaned to Mr. Ostrander.

Q. Mr. Ostrander's business was——

A. He is a garage man.

Q. And the material that was stored in your house, how much space would you estimate that that occupied?

A. Oh, it was all over our house. It was in the garage and down in the cellar and in almost every room there were typewriters and steel cabinets. They are still there.

Q. There were typewriters and steel cabinets in some of the rooms upstairs. What was the type of material in the garage and in the cellar?

A. Well, there was parts and tools.

Q. Go ahead.

A. And a hoist, tires, and oil drums—I just—everything that he would have used in his service station.

Q. And what was the nature of the material that was loaned to Mr. Ostrander?

A. That was his complete parts department and the surplus parts he had left over.

Q. Any tools?

A. I don't know.

Q. Did you have a conversation with Mr. Rice at the time that all of this occurred, that he stored all this material in your house and loaned some of it to Mr. Ostrander, with reference to why he was doing this and what his plans for the future were?

A. Yes, because he did not give up his Nash franchise.

Q. What did he say?

A. He loaned that material to Mr. Ostrander just while he was in Springfield, and after the war was over he was coming right back and going in business with Mr. York.

Q. His old associate?

A. Yes.

Q. And did he tell you this?

A. Yes, he told me that, and I was fully aware of it.

Q. Did you talk about that plan more than once?

A. Oh, yes.

Q. In Woodbridge?

A. Yes.

Q. And did he talk about that plan on some of your visits to Springfield?

A. Oh, yes, very frequently.

Q. Was Mr. York present at any of these conversations?

A. Yes.

Q. And in connection with the arrangements with reference to the material that was loaned to Mr. Ostrander rather than sold to him, did Mr. Rice say anything as to why it was loaned instead of sold in connection with his plans for the future?

A. Yes, he just——

[fol. 65] Q. What did he say?

A. He just loaned that to him because they wanted those parts and the bins back after the war was over so they could complete their service station again.

Q. And start all over again when cars were available?

A. That was right.

Q. After that was established, was Mr. Rice looking for some employment?

A. Yes, he looked several places for employment.

Q. And did he finally select a place of employment?

A. Yes.

Q. Where?

A. In Springfield.

Q. Was that in a war plant?

A. It was in a war plant, yes.

Q. Did he have any conversation with you as to his plans in going into this war plant in Springfield, why he went there and what your arrangement was to be in the meantime?

A. Yes. We arranged that he would go there because it paid him more money, and——

Q. Than what? More money than what?

A. Than what he could get anywhere around here.

Q. Go ahead.

A. And my little school, the income from that was a great help to both of us at that time because of his reduced income, and we couldn't rent our house because it wasn't finished. It is still unfinished. We couldn't rent it, it was so full of

equipment that nobody would want to take it, so I agreed——

Q. When you say "full of equipment," you mean equipment of Mr. Rice's and Mr. York's business?

A. Yes, that is right.

Q. Yes.

A. We agreed it was best for him to come home as often as he could and that I should go to Springfield as often as we could afford to have me come, because it was very expensive to go there and we didn't have any money.

Q. And I think you also said one of the considerations in addition to the fact that the house was unrentable because it was full of equipment and partially unfinished, was because you could continue to conduct the school, which was adding to the family income?

A. That is right.

Q. And during the time he was in Springfield, did he contribute towards the family income?

A. Oh, yes.

Q. Was it a regular contribution at a specific time?

A. Yes.

Q. Was it monthly?

A. Monthly.

Q. And a specific amount?

A. Well, he took care of all the bills.

Q. He took care of all the bills of the house?

[fol. 66] A. That is right.

Q. Sent you the money?

A. He sent me money every month.

Q. You paid the bills?

A. I paid the bills, yes.

Q. Did he pay some of the bills direct?

A. Sometimes he did. For quite some time he did, and then we found it was quite expensive for us to use so many checks, so he sent me one check and I went and paid the bills.

Q. In cash?

A. Yes. I think we were charged ten cents a check, and if he sent it in one lump, I could pay the bills and with that we would save the expense of the ten cents for each check.

Q. And did that arrangement and those contributions continue until the last time that you saw Mr. Rice?

A. Yes.

Q. And beyond the last time you saw Mr. Rice?

A. He sent $15 a week.

Q. Beyond the last time you saw Mr. Rice it continued for a period after that, didn't it?

A. Yes.

Mr. Morgan: Objected to as grossly leading and suggestive.

Mr. Persky: All right.

Q. Did it continue beyond the last time you saw Mr. Rice?

A. Yes.

Q. For how long beyond the last time you saw Mr. Rice?

A. I believe six weeks.

[Omission, see Transcript, p. 78.]

Q. What were Mr. Rice's hours of employment in this war plant in Springfield?

A. From three in the afternoon to eleven at night.

Q. How many days a week?

A. Seven days.

Q. During that period, did you visit Mr. Rice in Springfield?

A. Oh, yes.

Q. He was there for how many months before—up to the last time you saw him?

A. I believe eighteen months.

Q. How many times during that eighteen months do you—did you visit him?

A. Well, I was up there probably every month. I didn't always stay all night, sometimes I did and sometimes I didn't.

Q. Were you there at least every month?

A. Yes.

Q. Were you there perhaps more or less than every month?

A. No, I don't think so.

Q. No less?

A. No, I think perhaps there was once I did go there more than once, I think during my spring vacation.

Q. That you went more than once in a month?

A. I think I was there.

Q. So that you were there eighteen times or thereabouts in the eighteen months, am I correct about that?

A. That is right.

[fol. 67] Q. And some of those times, some of those eighteen times, did you stay overnight?

A. Yes.

Q. And when you stayed overnight, did you stay—where did you stay?

A. Twice I stayed at the Hyland Hotel, and the other times Mr. Rice made reservations in the Hotel Kimball.

Q. How many times altogether do you think you stayed in both the Hyland Hotel and the Hotel Kimball?

A. About seven or eight times.

Q. Were there any of those occasions that you stayed at the two hotels when you stayed there alone?

A. No, there was not.

Q. Who was with you on each of those occasions?

A. Mr. Rice.

Q. And when you stayed overnight, did he stay overnight?

A. Yes.

Q. And were some of those occasions for more than one night in succession?

A. Yes.

Q. And on those occasions, did he spend those several nights with you at the hotel?

A. Yes, he did.

Q. And during your visits when you did not stay overnight, whom were you with in Springfield?

A. With Mr. Rice.

Q. And how did you spend your days there during the period when you did not spend the time overnight, what did you do with Mr. Rice?

A. Well, usually I went there on the early train in the morning, and Mr. Rice would meet me and we would go for a hike and walk around the town, and then we would have lunch, and he had to be at work at three o'clock, so he would go back to work and I would go to Hartford and complete a little shopping tour there and then home.

Q. And on the occasions when you spent more than a day and you stayed there overnight or for several nights, as you testified, on several occasions, were you also with Mr. Rice during the period when he was not at work from morning until three o'clock?

A. Oh, yes.

Q. Going on walks, and having your lunch?

A. Hikes. We went through the lovely parks, and we went to most of the very nice places to eat and went to moving pictures.

Q. And then from three o'clock in the afternoon until eleven you took care of yourself?

A. That is right.

Q. And at eleven o'clock, would he come back to meet you?

A. Yes.

[Omission, see Transcript, p. 80.]

[fol. 68] By Mr. Persky:

Q. What happened at eleven o'clock on those occasions?

A. Usually we went to some restaurant and had something to eat. If there was a night show, we went to the night show.

Q. Uh-huh.

A. And we returned to our hotel and spent the night there, and the next morning we would get up and perhaps go for a walk in another park or somewhere, and that is the way we spent our time. There wasn't anything else to do.

Q. During those eighteen visits and those nights you spent together, and the days you spent together, what was your relations with Mr. Rice?

A. They were always very pleasant. Mr. Rice would call me and invite me to come up and say he had the reservations made. Sometimes it was a little difficult to get reservations, but somehow he always would make them and I would go up.

Q. Would you describe your relations with him on those visits when you were in Springfield with reference to the affection or lack of affection that he displayed?

A. Well, I never could say that there was ever lack of affection between Mr. Rice and I.

Q. Was there affection?

A. Yes, there always was.

Q. Did he so display it on these visits?

A. He always did.

Q. Your relations were the normal husband and wife relations?

A. They were.

Q. And were the normal husband and wife relations on the occasions of your occupying the same rooms in the hotels?

A. They were.

Q. Did Mr. Rice visit in Woodbridge during that eighteen months?

A. Yes, he did.

Q. How many times did you see him in Woodbridge? And how many different occasions during that eighteen months?

A. Oh, I think Mr. Rice came home perhaps every six weeks.

Q. Did he ever stay overnight on any of those visits?

A. Yes, indeed.

Q. How many times?

A. Once.

Q. Did you discuss with him why he didn't stay more often?

A. Well, he couldn't. He worked every day in the week; he worked Sundays and holidays.

[Omission, see Transcript, p. 82.]

[fol. 69] Q. Did he say that to you? Did he say it couldn't be done because he worked every day in the week including Sundays and holidays?

A. No, Mr. Rice couldn't get home because he had to work.

Q. Did you discuss that with him?

A. Yes, indeed.

[Omission, see Transcript, p. 82.]

Q. On that one occasion, when he did stay overnight, will you tell the Court about that? When did he come and what happened then? Did he have time off or something?

A. No, he took, I believe, a train that left around eleven o'clock.

Q. At night?

A. At night, and my son and I met him at the station.

Q. Had he notified you he was coming?

A. Yes.

Q. How?

A. Well, we were talking to him on the phone.

Q. Yes.

A. We often talked on the phone.

Q. You met him at the station?

A. He came for the sole purpose of helping my son with his garage.

Q. He came about sometimes after midnight?

A. Yes, it was around two in the morning.

Q. When did he leave?

A. He left the next noontime, around twelve.

Q. In the meantime he had given your son some help?

A. Yes.

Q. And spent the night with you?

A. Yes.

Q. And went on?

A. Oh, yes.

Q. And on all the other occasions, every six weeks, or about, every six weeks, when he came to visit you, what would be his arrival time and departure time and what did you do?

A. Well, sometimes he arrived shortly after seven and sometimes it was around nine.

Q. In the morning?

A. In the morning. And often-times we had so many little odd jobs that had to be done, he just put on his apron and little cap and mended something around the house that was falling apart.

Q. About what time would he leave?

A. He would leave about, usually around twelve o'clock. I would drive him to the station.

Q. He would come to Woodbridge about once in six weeks to spend those very few hours with you?

A. Yes.

Q. On those occasions, will you tell his Honor as to your relationship with each other with reference to his affection for you and yours for him? Would they be normal and natural as husband and wife?

A. They were very normal and very natural and we thor- [fol. 70] oughly enjoyed each other's company, and I think our home was one of the happiest in Woodbridge.

Q. You said something about having telephoned him on occasions or his having telephoned you while he was in Springfield. Is that so? Did you telephone each other?

A. Oh, yes, very frequently.

Q. Well, how frequently during that eighteen month period did you and Mr. Rice talk to each other on the long distance telephone?

A. Well, I perhaps called him once or twice a week, and sometimes Mr. Rice called me more often than that.

Q. And between your calls to him and his calls to you, you talked to each other altogether about how many times a week?

A. Well, I would say about anywhere from three to five times a week. Mr. Rice and I had a conversation with each other over the phone.

Q. And in addition to these visits, you to Springfield, and he to Woodbridge, and the telephone conversations, did you also correspond with him?

A. Yes.

Q. Did he write you?

A. Yes, he wrote to me every week, sometimes twice a week.

Q. Did you write to him?

A. I did.

Q. Now, did you save any of those letters?

A. I saved a few letters.

Q. How did you happen to save those few?

A. Well, I really don't know why I saved those few. They just happened to be in my desk.

Q. What was your habit as to letters from him when you read them and answered them?

A. I usually tore the envelopes up and used them for scrap paper, and if there was any paper in the letter I could use, I used that and I put the rest of it in the waste basket.

Q. But after this proceeding began, did you at Mr. Clark's request make a search of the house to see if you could find any letters from him?

A. Yes.

Q. Did you make such a search?

A. Yes, I made that search.

Q. Were you able to find some letters?

A. Just a few.

Q. Those few I think you testified happened to be in the desk drawer by chance?

A. That's all.

[Omission, see Transcript, pp. 85-86.]

By Mr. Persky:

Q. Did you get that question? How frequently did you write to him?

A. Possibly once or twice a week. He usually asked me [fol. 71] important questions in the letters, and I answered them immediately. Oftentimes it was to send him forms or something of that sort.

The Court: He wrote to you twice a week; and you wrote to him once or twice a week?

The Witness: Yes.

The Court: We will take a recess now.

[A recess was taken until two o'clock.]

Afternoon Session

Mr. Morgan: Before proceeding, your Honor please, I want to know if I am right in my assumption that I have—that all the testimony of Lillian P. Rice that has gone in except the testimony that she was married to Herbert Rice in Haverhill, Massachusetts, on July 7, 1921, has gone in subject to as though I had objected to each question and you had ruled against me and an exception taken?

The Court: Up to what date?

Mr. Morgan: From the time—all of her testimony except the testimony that she was married to Herbert N. Rice at Haverhill, Massachusetts.

The Court: On July 7, 1921.

Mr. Morgan: July 7, 1921, and that they moved to New Haven—that all the other testimony that has gone in has gone in under a ruling of the Court that I might have an exception to each question same as though I had objected to each question all the way through.

The Court: I didn't think you were holding out so far, but if that was the understanding——

Mr. Morgan: That was my understanding, and that is the reason I haven't objected right straight through.

The Court: Then that is the ruling.

Mr. Persky: Your Honor pleases, I am going to ask your Honor's indulgence and that of Mr. Morgan to suspend the examination of Mrs. Rice long enough to permit us to put on three short witnesses who come from Massachusetts, and whom we promised to permit to return today.

[fol. 72] Would you object to that?

Mr. Morgan: No objection whatsoever.

[Omission, see Transcript, p. 88.]

The Court: We will have a short recess and I will remain here, but we can go on as if Court was not in session. You take as long as you like.

[A brief recess was taken.]

ABRAHAM E. SMITH, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Persky:

Q. What is your profession?

A. Lawyer.

Q. How long have you practiced law?

A. Twelve years.

Q. In Massachusetts?

A. Yes.

Q. Was there a period during the war when you temporarily suspended the practice of law, and engaged in war work?

A. I didn't suspend——

Q. You did both?

A. I did both.

Q. Was there a time during that period when you did both when you were employed in some plant in West Springfield?

A. Yes.

Q. What is the name of that plant?

A. The Springfield Machine and Foundry Company.

Q. Between what dates were you employed there?

A. Sometimes in—between January of 1943 and April of 1943.

Q. While there did you become acquainted with Mr. Herbert Rice?

A. Yes, sir.

Q. During that period, how frequently did you see Mr. Rice?

A. Every day.

Q. Did you talk with him frequently?

A. Frequently.

Q. Did he talk to you about his affairs?

A. Yes, sir.

Q. About what time of the day and for what period of time during the day did you see him and talk with him?

A. I saw him usually between two-thirty and three in the afternoon. I worked from seven in the morning until three, and he worked on a later shift, and he generally came early. Generally he would come in sometime between two-thirty and twenty minutes of three and sort of over-lap.

Q. During those talks, did he tell you about his home and his business?

A. Yes.

Mr. Morgan: Objected to until we find out where the talks [fol. 73] were had and whether or not the witness was seeking to advise him in any way, since he was practicing law.

Q. You were not representing him as a lawyer?

A. No.

Q. You were talking to him as a fellow employee in this plant?

A. Yes.

Mr. Persky: Does that satisfy you?

Mr. Morgan: That's what I wanted to know.

Mr. Persky: What is the question?

The Court: The objection?

Mr. Persky: No, the question. The objection has been withdrawn.

[The question was read.]

A. Yes, he did.

Q. Did he tell you what business he was in?

A. Yes.

Q. What did he say?

A. He was in the automobile business.

Q. Did he tell you about why he left the automobile business in New Haven and came to West Springfield?

[Omission, see Transcript, p. 91.]

The Court: I will rule. I will admit the question.

Mr. Morgan: Exception.

The Court: Noted.

Mr. Persky: What is the question?

[The question was read.]

A. Yes.

Q. What did he say?

A. He said the automobile business was at a standstill with the beginning of the war, that there were no more new cars to be sold, so that he felt as though he wanted to go into defense work.

Q. And did he say anything to you about his plans at the conclusion of the war?

Mr. Morgan: Objected to.

Q. With reference to his business?

Mr. Morgan:

[Omission, see Transcript, p. 92.]

Q. What were the two dates between which these conversations occurred?

A. Between January, 1943, and April, 1943.

[fol. 74] Mr. Persky: Will you read the question before Mr. Morgan objected?

[The question was read.]

Mr. Morgan: I will object to that question as being too remote.

The Court: I will admit the question.

Mr. Morgan: 1943—exception, please.

The Court: Exception noted.

A. He said he intended to resume the automobile business.

Q. Where?

A. In New Haven.

Q. How many times did he talk to you about the intentions to return to New Haven at the end of the war and resume his business in the automobile business there?

A. Well, there were several—I really couldn't say. Perhaps, to my best recollection, it would be not more than six or seven times.

Q. Did he talk to you about his home in Woodbridge?

A. Yes.

Q. And about his wife?

A. Yes.

Mr. Morgan: Same objections.

Q. And did he——

The Court: Exception noted.

Q. And did he talk to you about why his wife was living in Woodbridge while he was in West Springfield?

[Omission, see Transcript, p. 93.]

Q. You tell us what conversation you had with him during that period. Go right ahead.

Mr. Morgan: I hope this is subject to the same objection.

[Omission, see Transcript, p. 94.]

Mr. Morgan: All right, I am objecting to it as immaterial, totally immaterial, all that was said between January 1, 1943, and April 1, 1943.

Mr. Persky: All right.

Mr. Morgan: It has nothing to do with the issues in this case.

Q. Now, will you proceed.

Mr. Morgan: May I have an exception?

The Court: Exception noted.

A. Well, we talked about New Haven a good deal inasmuch as I went to school here, and he talked about his home [fol. 75] in Woodbridge, and he told me about—we discussed some of his neighbors, and I recall that one of my former professors at Yale was a neighbor of his. He told me that he was in business with another man, and I remember the name was York, and that comes to my mind because it was also the name of the hockey coach at Yale during that period or sometime before that. He told me that his business associate had gone into the service and that there was no sense carrying on the business because of the inactivity generally in the automobile business, and for that reason he undertook to take on defense work. The few times we talked about the resumption of the business, he talked about —we both thought that there would be quite a boom in the automobile business after the war. I remember one occasion where he told me he had been in New Haven during the preceding weekend, and nothing special was said about what he did there, except that I think he did tell me that it was good to be back. Most of the time he worked seven days a week and did not get out of Springfield too much. I also knew the people with whom he lived, because he lived with a family by the name of Griffin and Mr. Griffin was deputy sheriff in Hamden County and did my work—did the work for my office, and he was very well known in the general section. There was quite a bit of conversation about Yale generally, and New Haven, nothing specific that comes to my mind at the present time.

Q. Have you told all you recall now without my refreshing your recollection?

A. Well, I know we also talked about the fact that his wife was here in Woodbridge and he was in Springfield, and I asked him whether that was not a hardship and he said that it was that they felt that they had a very comfortable home there, and he would hate to see them give it up, even for a short period. Another point in connection with the housing problem was that Springfield was already—when I say Springfield, I mean the general district——

Mr. Morgan: Objected to. This is not any conversation with Mr. Rice.

[fol. 76] Mr. Persky: The witness is testifying that there was a conversation.

Mr. Morgan: No, he isn't.

Q. Are you testifying as to a conversation?

A. Yes, this is a conversation with reference to housing.

The Court: You may proceed.

A. (Continuing:) Springfield was already beginning to feel the effect of the housing shortage because there were several war industries in the general region, and he doubted whether he could find suitable accom-odations.

Q. Is that all?

A. That is all that I can remember.

Q. Was there any conversation that you recall that gave you any information as to the relationship between Mr. Rice and his wife at that time?

A. ——.

[Omission, see Transcript, p. 96.]

Q. Was there anything you can recall? I call your specific attention about the hardship of being separated and what he said when he was in Woodbridge, and how good it was to be back and what he said about visits he made to Springfield. Having called those to your attention, do you recall the substance of any conversation——

[Omission, see Transcript, pp. 96-97.]

The Court: Do you remember his stating anything that his wife came to Springfield?

The Witness: Yes, your Honor.

The Court: You may answer the question.

A. I don't remember any specific description of how they spent their time. I do recall that his wife did come to

Springfield, that he told me that she did come weekends occasionally, and that was with reference to our general conversations about the hardship of being separated and knowing he did spend a lot of time there, and I can remember distinctly he did say she did come to Springfield occasionally.

The Court: Does that give it complete?
The Witness: I think it does.
The Court: Does that answer your question?
Mr. Persky: You may cross-examine.

[fol. 77] Cross-examination.

By Mr. Morgan:

Q. Did you ever me-t his wife at Springfield?
A. Once.
Q. Where did you meet her in Springfield?
A. I met her in my office.
Q. In your office?
A. Yes.
Q. Was that with Herbert N. Rice?
A. No.
Q. Was that while Herbert N. Rice was still in Springfield?
A. No, sir.
Q. That was after Herbert N. Rice had left for Nevada, was it?
A. I wouldn't know as to that because I left——
Q. She came——

[Omission; see Transcript, pp. 98-99]

Q. When you say you met his wife in Springfield, what month and in what year?
A. I would say about a year ago.
Q. That was sometime in 1945?
A. Yes, sir.
Q. It was in 1945, was it? This is 1946.
A. I would think so, yes.
Q. You were back practicing law at that time in Springfield?
A. Yes.
Q. She came to you as a client at that time, did she?
A. No.

Q. She came to you for advice?

A. No, sir.

Q. She came to you to ask you about what you knew about her husband while he was working in Springfield?

A. Yes, sir.

Q. And had quite a long conference with you, did she?

A. About an hour.

Q. She paid you for the time she took up from your law business?

A. No, sir.

Q. When did you leave this Springfield Foundry and Machine Company?

A. Sometime in April, 1943.

Q. You went into the service at that time, did you?

A. A few months later.

Q. Army or Navy?

A. Army.

Q. So you never took—you never assumed to advise Mr. Rice as a lawyer?

Mr. Persky: Mr. Rice?

Q. Mr. Rice, as a lawyer, about anything?

A. No, sir.

Q. These were conversations, you say, that were between two fellow employes in the same factory?

A. Yes, sir.

Q. Did you ever visit Mr. Rice at his rooms at the Griffins?

A. No, sir.

Q. You knew he was rooming at the Griffins at that time?

A. Yes.

Q. At that time, 1943, insofar as you knew, you never had any conversation with Mr. Herbert N. Rice about a divorce that he might be wanting to procure, did you?

A. No, sir.

Q. You didn't know anything about any divorce?

A. No, sir.

Q. And the first you ever met Mrs. Rice was after Her-
[fol. 78] bert N. Rice had been dead for sometime?

A. So I understand.

Q. That is all. Thank you very much.

Redirect examination.

By Mr. Persky:

Q. In any of those conversations you had with Mr. Rice, was there any indication in any way whatsoever that, a divorce could possibly have been in his mind?

A. No, sir.

Q. What was his attitude towards his wife in that direction?

[Omission, see Transcript, p. 101.]

Q. Judging from what he said to you about his wife in relation to the possibility of his talking to you about a divorce, what was his attitude towards his wife, taking it from his conversation.

[Omission, see Transcript, p. 101.]

The Court: I will admit it.

Mr. Morgan: Exception.

The Court: Exception.

A. Well, I would say he got along very well with his wife.

Q. The things he said to you indicated that?

A. Yes, sir.

Mr. Persky: That is all.

Recross-examination.

By Mr. Morgan:

Q. You never were in his home, were you?

A. No, sir.

Q. And you had never met her, you say?

A. No, sir.

Q. So, what you have just told us is based upon the way he talked to you sometime in 1943 between January and April?

A. Yes, sir.

Mr. Morgan: That's all.

Mr. Persky: That's all.

THOMAS J. HOWARD, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Persky:

Q. Did you know Mr. Herbert N. Rice?
A. Yes.

Mr. Morgan: What is his address?

[fol. 79] Q. Where do you live, Mr. Howard?
A. West Springfield, Massachusetts.
Q. What is your present business?
A. Life insurance salesman.
Q. Were you ever employed in a war plant?
A. I was.
Q. In West Springfield?
A. Yes.
Q. What was the name of the plant?
A. The Springfield Machine and Foundry Company.
Q. Between what dates were you employed there?
A. From about the 1st of September, 1942, to around the latter part of May, 1944.
Q. You say you did know Mr. Rice?
A. Yes.
Q. When did you become acquainted with him?
A. When he came there to take up employment.
Q. And with relation to the 1st of September, 1942, how long after that would you say it was?
A. My recollection is he came there sometime in the latter part of September.
Q. Of 1942?
A. Of 1942.
Q. And did you leave there first or did he leave there first?
A. He left there first.
Q. About approximately how long before you left there?
A. Why, anywheres from five or six weeks to a couple of months, I would say.
Q. So that your acquaintanceship with Mr. Rice extended over the entire period of his employment in that plant?
A. That is right.
Q. And his hours were from three to eleven?

A. Well, they had diffrent hours there. Started off from four p.m. to one p.m., and then changed from three to twelve, and then from three to eleven.

Q. But your hours were approximately the same as his?

A. Yes.

Q. And during that period, how frequently did you see him?

A. Every day several times, or every night several times—quite often, in fact.

Q. Did you ever have any conversation with him?

A. Oh, yes.

Q. How frequently do you think you talked with him?

A. Why, several times a night.

Q. In any of those conversations, did he discuss his personal affairs with you?

A. Yes, personal business.

Q. Did he talk about his wife?

A. Why, it was mostly about his home.

Q. It was mostly about his home?

A. Yes.

Q. In Woodbridge, Connecticut?

A. Yes.

Q. Did he talk about his business?

A. I asked him a few questions about that, and he talked about it, yes.

Q. Did you know from his conversation he was the Nash [fol. 80] automobile agent in New Haven?

A. Yes.

Q. Did you at any time discuss with him how he happened to be working in West Springfield?

A. I asked him why he did, yes.

Q. What did he say?

A. Well, he told me he did not want to be engaged in a defense plant work in New Haven where he might meet people—whom he had previously done business in automobiles?

Q. Did he say why he didn't want to so meet them?

A. If I recall, he would have occasion to do business with them and didn't want to have the other association come in, the war plant association.

Q. If I understand you correctly; he wanted to work in Springfield where he couldn't meet his customers and business associates because when he returned to business he would meet them again and that would hurt his standing?

A. That was my understanding, yes.

Q. Did he say that to you more than once?

Mr. Morgan: I move that last answer go out, because it is this witness's understanding.

Mr. Persky: Let's clear that up.

Q. Did he say that to you?

Mr. Morgan: Let the witness testify as to the conversation without my friend putting it in the witness' mouth, and leading him.

Q. Did he say that to you?

A. Yes.

Q. Did he say that to you more than once?

A. I don't believe so.

Q. At the time he was leaving, did you have a talk with him at that time?

A. Yes, he came around to say good-bye to me.

Q. Did he tell you what his plans were after leaving this plant where you both worked?

Mr. Morgan: Objected to. Let him give the conversation.

Mr. Persky: I am asking for a yes or no answer.

Q. Did he tell you what his plans were?

[Omission, see Transcript, p. 106.]

Mr. Persky: Will you read the question?

[The question was read.]

Q. Yes or no?

A. Yes, he did.

Q. What did he say?

A. He told me he wanted to take a rest before resuming the automobile business.

Q. Did he tell you where?

[fol. 81] A. I don't recall that he did.

Q. You didn't know where he was going for a rest?

A. Oh, going for a rest?

Q. Yes.

A. As I recall, he told me he was going home.

Mr. Persky: That is all.

Cross-examination.

By Mr. Morgan:

Q. So, Mr. Howard, if I understand you correctly, that is Thomas J. Howard, isn't it?

A. Yes.

Q. You worked at the same plant as he did and you talked just like workmen would talk back and forth to each other, is that it?

A. Not exactly it. I thought he was a little higher grade type of man than the average machinist in there.

Q. You had been in other work, I assume, this war plant work?

A. The same work I am in now.

Q. You were doing the same thing he was doing because of war necessity and things of that sort?

A. There was a difference. I was continuing in my life insurance work.

Q. At the time that you had your last talk with him, he said that he was quitting because he was going home for a rest?

A. That is my recollection, yes.

Q. That is what he told you, the reason why he was quitting there?

A. Yes.

Q. And that is all you knew—you thought the man had left the plant and had gone home for a rest?

A. Yes.

Mr. Morgan: I think that is all, thank you.

Redirect examination.

By Mr. Persky:

Q. But he said he was going home for a rest before resuming the automobile business?

A. That's as I recall it.

Mr. Persky: That is all.

JAMES S. MORGAN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direst examination.

By Mr. Persky:

Q. Mr. Morgan, where do you live?

A. I live at 39 Fort Hill Terrace, North Hampton, Massachusetts.

Q. Was there a time when you were employed in West [fol. 82] Springfield, Massachusetts?

A. Yes, sir.

Q. Who was your employer there, what firm?

A. The Springfield Machine and Foundry.

Q. In what capacity were you so employed?

A. I was the personnel manager.

Q. During what period?

A. I was there from June, 1942, to July, 1945.

Q. While there did you have occasion to meet Mr. Herbert Rice?

A. Yes, sir, I did.

Q. Had you known, Mr. Rice prior to the time you saw him in West Springfield?

A. Yes, sir.

Q. How well?

A. He was a very good business acquaintance of mine.

Q. Prior to that time?

A. Yes, sir.

Q. When did you meet him in West Springfield when you were personnel manager of this plant?

A. I met him sometime in September of 1942.

Q. Did you have a conversation with him at that time?

A. Yes, sir.

Q. Tell us what that conversation was.

A. Well, Herb came into my office to see me, and after shaking hands with him, and so forth, he told me he was looking for a job. He asked me if I had any position open for him in the Springfield Machine and Foundry. At that time I told him that I didn't have a job open at the moment for a man of his education and intelligence. There were just factory jobs open at the present time, but I would keep him in mind, and a little later on I probably would be able to place him. He said at that time he was very willing to take factory work, so I put him in the factory on that date.

Q. Did you have any conversation with him at that time? as to why he wanted a factory job in Springfield?

A. Yes, I asked him why.

Q. Yes, and what did he say?

A. He said that—he told me that being in business in New Haven for a great many years, that he didn't more or less want to be belittling himself and work in a factory in New Haven and meet all the business acquaintances he had and customers, and he thought it would be better if he got out of town, and when he resumed his automobile business, people wouldn't know he would be classified as an ordinary factory hand, or had been working as such in New Haven.

Q. After that, did you ever have any conversation with him in which he mentioned his plan of resuming the auto- [fol. 83] mobile business in New Haven after the war?

A. Approximately, a week before Mr. Rice left the Springfield Machine and Foundry, he came in to tell me he was resigning. He told me at that time he didn't feel well at all, and that he was tendering his resignation and was going to Wisconsin to the Nash-Kelvinator Corporation, and at that time he was going to discuss with them the future of the automobile business in New Haven, and after he had learned the factory's plans, he was coming back to New Haven and was going to have a slight operation, and after that was over, he was going to resume—he hoped to resume with the permission of the Nash factory his automobile business in New Haven.

Q. Have you ever met Mrs. Lillian Rice?

A. Yes, I have.

Q. Did you meet her during that period that Mr. Rice was working with you?

A. No, sir.

Q. You met her later?

A. Yes.

Q. Did you ever talk to Mr. Rice about Mrs. Lillian Rice?

A. Yes, sir.

Q. And about his home in Woodbridge?

A. Yes, sir.

Q. Will you tell the conversation that you had with Mr. Rice about Mrs. Lillian Rice, the home in Woodbridge, and their relations with each other.

A. The first time——

[Omission, see Transcript, p. 110.]

The Court: I will admit it.
Mr. Morgan: Exception.
The Court: Noted.
Mr. Persky: Proceed.
The Witness: May I have the question read?

[The question was read.]

A. The day I hired Mr. Rice, I asked him how his wife was and how his home was in Woodbridge, as prior to that time he had talked often to me about his home, when I worked in New Haven, and he also inquired about my wife and my son. Then, during the course of the employment, he probably asked me how my family was a dozen times and I asked him also about Mrs. Rice an equal number of times. On one occasion I do recall I went down to the factory after my normal working hours, around nine o'clock at night, and at that time Mr. Rice was employed in the tool crib. He [fol. 84] shouted at me and asked me if I would come in and asked me if I would have a piece of cake Mrs. Rice had made for their wedding anniversary. I went inside the tool crib and sat down and had a piece of anniversary cake. That's about all.

Q. Do you recall anything else? Recall any conversations about—in which he talked to you about visits to Springfield from time to time?

A. On one or two—on one occasion I recall Mr. Rice told me he was going home for the weekend, and on another time I recall Mr. Rice told me Mrs. Rice was coming down for the weekend, down to Springfield.

Q. Did he ever talk to you about the hardship of being separated from his wife, and the reason why they were living in that way instead of living together in Springfield?

[Omission, see Transcript, p. 112.]

The Court: Even so, he has gone through most of his story, and I think after you have gone through most of your story, leading questions are permitted. I will allow it.
Mr. Morgan: Exception.
The Court: Exception noted.
The Witness: May I have the question read?

[The question was read.]

A. The only answer I can give to that question is this: I presume the way Mr. Rice talked, Mrs. Rice was conducting

a school in Woodbridge, and that Mr. Rice was working in West Springfield and going home weekends.

Q. You got that from talks with him?

A. Yes.

Mr. Persky: You may examine.

Cross-examination.

By Mr. Morgan:

Q. You remember now when Mr. Rice went to work at Springfield?

A. Sometime in September, 1942.

Q. Remember when it was when he left the plant?

A. He left in March, 1944.

Q. Do you remember what time it was, what time in the year it was he called you into the tool room to offer you a piece of cake and said his wife had sent him for their wedding anniversary?

[fol. 85] A. I do not, sir.

Q. You don't remember whether it was summer, winter, spring or fall?

A. I do not, sir.

Q. Did that plant work during holidays—holidays in July, July 4, and so forth?

A. That plant worked all the legal holidays called—which were called legal holidays by the late President Roosevelt.

Q. So you had never seen Mrs. Rice as I understood you, until after Herb's death?

A. That is true.

Q. You knew Herb Rice pretty well, you say?

A. I said he was a very good business acquaintance.

Q. He wasn't a man that told his business to many people, was he?

[Omission, see Transcript, pp. 113-114.]

Q. Mr. Morgan——

A. Yes, sir.

Q. You say that you were a good business acquaintance of Herbert Rice?

A. Yes, sir.

Q. When he quit, did you ask him why he was quitting his job?

A. No, he told me, sir.

Q. Didn't you ask him, why are you quitting at this time, Herb?

A. He came in and told me he was quitting.

Q. He said he was going to Wisconsin?

A. Yes, sir.

Q. He was going to see the Nash-Kelvinator and see what the prospects were going to be for opening up after the war?

A. Well, he was going—the way he put it, he was going to ask them if now was the time to open up—he wanted to get an idea from them when they thought it would be a good time to open up, whether it was the present or six months from now or a year from now.

Q. Did he tell you at that time that there was a lease in existence as to the building or for the building where the Rice-Nash Corporation had carried on its business and that there was a suit on that lease?

A. He did not, sir.

[Omission, see Transcript, p. 115.]

Q. Did Mr. Rice tell you the Rice-Nash Corporation was sued by the landlord by the name of Hoffman?

A. He did not, sir.

[Omisison, see Transcript, pp. 115-116.]

Q. Did you ever hear from Herb Rice after that?

A. After what?

Q. After he had left your plant?

A. No, I never did.

Q. You don't know whether he went to Wisconsin or [fol. 86] whether he did not, whatever he may have told you about going to Wisconsin?

A. I don't know whether he went there or not, sir.

Mr. Morgan: That is all.

Mr. Persky: Before Mrs. Rice is put back on the witness stand, with Mr. Morgan's helpful cooperation we are going to introduce the record of some hotel registrations in the Hotel Kimball in Springfield, Massachusetts. Mr. Smith at our request procured these from the Hotel Kimball after we had made the arrangements and brought them here with the idea that Mr. Morgan was to see them, and identify the handwriting and read the important entries into the record with the admission as to whose handwriting it is, and then

we were to give these back to Mr. Smith to return to the Hotel Kimball.

Is that correct?

Mr. Morgan: It is correct insofar as—it is not correct. I agreed they could be read into the record. I agreed that I would make no claim that they were not the genuine hotel records and those that were signed by Herbert N. Rice or H. N. Rice and wife, I would admit were his signatures, but I told him that I would not admit they had any materiality, so that if they are being offered in evidence, I am objecting on the same ground I objected this morning, on the ground that it makes no difference whatsoever in this case as to whether she was in Woodbridge when he visited her or whether she visited him in Springfield—that it has no bearing whatsoever on the question as to whether or not he was domiciled in Nevada at the time of this divorce but so as to give the Nevada court jurisdiction. I do object to them because I claim they are absolutely immaterial and have no place whatsoever in this present action.

Mr. Persky: Well, that is the same objection we have had before, and I presume your Honor will make the same ruling.

The Court: I will admit it.

Mr. Morgan: Exception to each one of them.

Put them in one at a time, will you?

The Court: An exception may be noted to each question insofar as the registration in the hotel.

[A conference was had between counsel.]

[fol. 87] The Court: Mr. Persky, do you expect to state that loud enough for the stenographer?

Mr. Persky: We are trying to make sure I am going to say the correct things in the record.

Mr. Morgan: I have no objection except the objection I have noted that your Honor has ruled against me, and I have taken an exception, and I am not claiming that is not his signature.

Mr. Persky: May we assume these objections and exceptions will be made to every hotel registration?

Mr. Morgan: Yes, you put them in.

The Court: You may proceed.

Mr. Persky: The hotel register of the Hotel Kimball for April 24, 1943——

Mr. Morgan: What is this? What exhibit?

Mr. Persky: I am just reading it into the record.

[Continuing.] Contains the following in the admitted handwriting of Herbert Rice—H. N. Rice and wife under the heading name. Under the heading address, subheading, street and number, appear the words Center Road. Under the subheading city and state of the general heading address appear the words Woodbridge, Connecticut. All that is in the handwriting of Mr. Rice.

Mr. Morgan: Is that Woodbridge, Connecticut, or Conn?

Mr. Persky: Conn. Conn. stands for Connecticut.

Road is written out in full. To the right of that under the heading room appears, in handwriting unidentified, 808.

Mr. Morgan: When did they arrive and when did they check out?

Mr. Persky: The record of the hotel shows they checked in on April 24, 1943, at 2:32 p. m., and they checked out on April 25, 1943, at 4:27 p. m.

In the Hotel register of the Hotel Kimball for August 25, 1943, there appears thereon in the admitted handwriting of Mr. Herbert Rice the following under the heading name: Mr. and Mrs. H. N. Rice. Under the general heading [fol. 88] address, subheading of street and number, Center Rd. Under the subheading city and state, the words Woodbridge, Conn. In the final column under the heading room, in the handwriting admittedly not Mr. Rice's and unidentified the figures 706. Mr. and Mrs. Rice checked into the hotel on August 25, 1943, at 1:29 p. m., and checked out on August 29 at 8:41 p. m.

On the hotel register of the Hotel Kimball for March 11, 1944, I will ask your Honor to note that date because that date will become significant. It is the formal registration of the Hotel Kimball, March 11, 1944. There appears on this sheet in the admitted handwriting of Mr. Rice under the heading name, Mr. and Mrs. H. N. Rice. Under the general heading address, subheading, street and number, Center Road, and road is abbreviated to Rd. Under the heading address, subheading city and state, Woodbridge, Ct., the abbreviation of Connecticut is Ct. in this instance, and under the heading room, in handwriting admittedly not Mr. Rice's but unidentified, the figures 865. The record shows they checked into the hotel on March 11, 1944, at 12:12 p. m., and that they checked out of the hotel on March 13, 1944, at 11:31 a. m.

Mr. Morgan: March 13 or March 12?

Mr. Persky: Checked in March 12—March 11, I should say, at 12:12 p. m., and checked out March 13 at 11:31 a. m.

The Court: Is that 11:31 or 11:18?

Mr. Persky: 11:31.

Mr. Morgan: a. m.?

Mr. Persky: a. m.

Now, there are two more hotel registrations that I want to refer to, one is under date of March 25, 1943, and in that instance the hotel register indicates the registration and the name—in the handwriting of Mrs. Rice——

Mr. Morgan: Mrs. what Rice?

Mr. Persky: Mrs. Herbert N. Rice, Center Road, Woodbridge, Connecticut, Room 508, and the time of checking in was March 25 at 10:40 p. m., March 25, 1943, at 10:40 p. m., and checking out on March 26, 1943, at 12:28 p. m.

[fol. 89] Mr. Morgan: March what was that?

Mr. Persky: March 26.

Mr. Morgan: What hour?

Mr. Persky: 12:28 p. m.

This, if your Honor pleases, will be connected by testimony indicating that although Mrs. Rice's handwriting — on the register, that Mr. Rice spent the night with her at the hotel.

The Court: In that Hotel Kimball?

Mr. Persky: Yes, your Honor.

Mr. Morgan: All of these are going in subject to the same objection, I take it, your Honor please, and same exception?

The Court: Yes.

Mr. Persky: The final registration is on the hotel register of the Hotel Kimball under date of March 20, 1943, and that registration is likewise in the handwriting of Mrs. Herbert N. Rice, indicating a registration as of Center Road, Woodbridge, Connecticut, and Room 608, and the record of the hotel shows that the checking in was on March 20—March 20, 1943, at 10:01 p. m., and the checking out on March 23, 8:16 a. m.—March 23, 1943, at 8:16 a. m.

Mr. Morgan: 8:16?

Mr. Persky: That's right, and the hotel records show that Mr. and Mrs. Rice occupied that room and it will be connected up by further testimony.

Unless Mr. Morgan has further questions of these witnesses from Springfield, we are proposing to allow them to go back.

Mr. Morgan: I haven't any.
Mr. Persky: Your Honor, may they go back?
The Court: They may go back.

LILLIAN RICE, the plaintiff, called as a witness on her own behalf, having previously been duly sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. Persky (Continued):

Q. Before I ask where we left off before, I want to clear up this question of the two hotel registrat-ons which have [fol. 90] just been read into the record indicating that on two occasions when you were at the Hotel Kimball, the registrations were in your handwriting. I will ask you how that happened.

A. Well, I arrived there first and registered for us. I was the first one to be there. And then on another occasion I was with Mr. Rice, I had to go to Boston to buy some school equipment and I didn't arrive back until after Mr. Rice had gone to work, so I registered again, but he came there in the evening after work, after eleven.

Q. On both those occasions, did he spend the night or nights at the hotel that your registration indicated, and spend them with you?

A. Yes, he did.

Q. Was there any occasion when you were at the Hotel Kimball in Springfield during that period when Mr. Rice did not spend the nights with you?

A. No.

Q. Or at the other hotel—what did you say the name was?

A. The Hyland Hotel—no.

Mr. Persky: Now, I think, Mr. Reporter, that we were on the subject of letters.

By Mr. Persky:

Q. I show you—I'm afraid to name colors—is this orange or yellow?

A. I should say it was a dark yellow.

Q. I show you a dark yellow sheet of paper, and ask you to examine it and tell me whose handwriting it is on it?

A. That is Mr. Rice's handwriting.

Q. I will also ask you to examine it and tell his Honor what it is, I mean, what kind of a document it is, and whether you know it's approximate date.

A. Well, I don't know the exact date.

Q. I said approximate. What is its approximate date?

A. December, 1942.

Q. During the month of December, 1942?

A. Yes.

Q. How did you arrive at the date, through the context of the letter?

A. Yes.

Q. You had read the letter, and under my instructions or Mr. Clark's instructions have read it with the idea of determining about when it was written?

A. That's right.

Q. And is this one of the letters you received from Mr. Rice from West Springfield or Springfield?

A. From West Springfield.

Q. Was it?

A. Yes.

Q. And one of the letters you subsequently found in [fol. 91] some drawer or desk in your home when you were asked by us to search for letters?

A. In my drawer.

Mr. Persky: I offer it.

Mr. Morgan: Let me see what it is.

I would object to that because it is entirely immaterial and nothing to do with the issues in this case.

Mr. Persky: I am offering the whole series of letters, your Honor please, along the same general lines as the oral testimony of the witnesses from Springfield and Mrs. Rice's testimony as to the relationship between Mr. Rice and Mrs. Lillian Rice during this whole period in West Springfield as to the time of Mr. Rice's sudden disappearance from the scene, and subsequently apparently bobbing up in Reno, as bearing on the probability that he did or did not abandon his domicile in Connecticut as the law requires, and adopt, as the law requires, a new domicile elsewhere. All of this is part of the minute detail that goes to show the general picture and is the same line of testimony in a different form that was objected to before.

[Omission, see Transcript, pp. 126-128.]

The Court: I will admit it. It may be marked Plaintiff's Exhibit B.

Mr. Morgan: Exception.

The Court: Exception noted.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit B.]

Mr. Persky: Your Honor had read Plaintiff's Exhibit B, which has been identified as a letter from Mr. Herbert Rice to Mrs. Lilliam Rice written during December, 1942. I propose to introduce a series of letters—not so many—and unless your Honor wishes it, I will not take the time to read those. If your Honor wishes it, I will be glad to do it. If your Honor would prefer it, I will put them in and your Honor will read them, perhaps, when you are considering the case. I think either I should read them or they should be read simply to bear on the question of this intention to abandon and when it developed, if ever. [fol. 92] I can read each one of those as they come in. I would be delighted to do it if your Honor wishes to take the time.

The Court: I think you will have to show them, of course, to Mr. Morgan.

Mr. Persky: Yes.

The Court: And when he acts upon them, then I will act upon them, and you perhaps can let me see them.

Mr. Persky: I think that would be well. It will relieve your Honor from hearing the sound of my voice during all those letters and give me a rest.

By Mr. Persky:

Q. I show you another dark yellow document and ask you if you identify the handwriting on this.

A. Yes, that is my husband's writing.

Q. Is this likewise a letter you received from him from West Springfield?

A. Yes.

Q. At our request did you examine that letter and its contents for the purpose of fixing the approximate date this letter was received by you?

A. Yes.

Q. What did you find was its approximate date?

A. That is in 1942, December.

Q. Which is the same date as Plaintiff's Exhibit—the same month as Plaintiff's Exhibit B?

A. That's right.

Q. But received after Plaintiff's Exhibit B, the first letter?

A. Yes.

Mr. Persky. I offer this.

Mr. Morgan: Is your Honor going to take a recess? I might——

The Court: Perhaps I will take a recess and you can take all of those letters you intend to introduce and show them to Mr. Morgan and let him look them over.

Mr. Persky: All right.

The Court: That would save some time, and I can act on them. We'll act upon them when we come in.

[A brief recess was taken.]

Mr. Persky: I think Mrs. Rice had identified the 2nd of December, 1942 letters when we stopped.

[Omission; see Transcript, p. 131.]

[fol. 93] The Court: It may be marked Plaintiff's Exhibit C.

Mr. Morgan: Exception.

The Court: Exception may be noted.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit C.]

Mr. Persky: What does your Honor wish me to do about reading them? Will you read them yourself?

The Court: I believe she said this letter was written later?

Mr. Persky: Later in the same month.

The Court: December, 1942?

Mr. Persky: Yes.

The Court: Unless you gentlemen feel they ought to be read——

Mr. Persky: No. I simply take this view of it: I think eventually if your Honor feels that there is some doubt in your mind, after we are through, as to that issue of abandonment, I think that your Honor might read these letters in considering the case, because we believe that while they contain nothing specifically world-shaking, the whole group of

letters, when read as a group, and I wish there were more of them, indicate no such intention during that period.

The Court: We'll leave it that way. They will be just admitted.

Mr. Persky: Yes, with the exception of the final letter which is very short, and with your Honor's permission, I will read it to get at the general tone of the letters.

[Omission, see Transcript, p. 132.]

By Mr. Persky:

Q. I show you three sheets of paper—four sheets of paper, white paper at this time, and ask you whether you recognize that handwriting.

A. Yes, that is my husband's handwriting.

Q. And you have read this letter at our request with the purpose of fixing the approximate time when it was written, have you?

A. Yes.

Q. What is the approximate time this letter was received by you?

A. Shortly after the first of January.

Q. What year?

A. 1943.

[fol. 94] Mr. Persky: May this be marked Exhibit D?

Mr. Morgan: Same objection to that letter, your Honor please.

The Court: It may be marked Plaintiff's Exhibit D. An exception may be noted.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit D.]

Q. I show you another letter on two sheets of paper, dark yellow again, and ask you if this is in your husband's handwriting?

A. That is.

Q. And whether you have examined it with the purpose of fixing the approximate time when you received it, have you?

A. Yes.

Q. What is the approximate time you received it?

A. That is January, 1943.

Q. And this letter was received in the same month as exhibit D, but at a later time?

A. Yes.

Mr. Morgan: Your Honor please, I object also to the form of some of these questions. I object to his saying, "This is in your husband's handwriting," because the nub of this case is to determine whether it was the husband at the time the letters were written in 1943. If it is taken to mean that, I have no objection—

The Court: As of that date. I believe you don't dispute the fact that he was married to Mrs. Rice in January, 1943?

Mr. Morgan: No, I don't.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit E.]

Mr. Morgan: And I object that it is immaterial as well.

The Court: Exception noted.

Q. I show you another letter consisting of two sheets of dark yellow paper, and ask you, Mrs. Rice, whether that is in your husband's handwriting?

A. That is.

Q. You have examined this letter for the purpose of ascertaining the approximate time you received it?

A. Yes.

Q. And when was that approximate time?

A. In June, 1943.

The Court: June, 1942?

Mr. Persky: 1943.

[fol. 95] Mr. Morgan: Same objection to that letter, that it is incompetent and irrelevant.

The Court: It may be marked Plaintiff's Exhibit F, and exception may be noted.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit F.]

Q. I show you another letter consisting of one sheet of dark yellow paper and ask you whether that is in your husband's handwriting?

A. Yes, sir.

Q. You have examined this letter for the purpose of determining the approximate time you received it?

A. I have.

Q. When was the approximate time you received that letter?

A. That is in June, 1943.

Q. The same month that you received Plaintiff's Exhibit F?

A. That's right.

Q. But at a later time than Exhibit F?

A. Yes.

Mr. Morgan: Same objection to that.

The Court: It may be marked Plaintiff's Exhibit G. An exception may be noted.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit G.]

Q. I show you another letter consisting of one sheet of dark yellow paper and ask you whether that is in your husband's handwriting?

A. It is.

Q. That letter contains a date at the top, does it not?

A. Yes.

Q. And the date is what?

A. Is that a two?

Q. Yes, two, twelve.

A. Two, twelve, forty-four.

Q. February 12, 1944?

A. Yes.

Q. Are those figures two, twelve, forty-four in your husband's handwriting?

A. That's right.

Mr. Persky: I offer that.

Mr. Morgan: Same objection to that.

The Court: It may be marked Plaintiff's Exhibit H. An exception may be noted.

[The letter referred to was received in evidence and marked Plaintiff's Exhibit H.]

Mr. Persky: This letter, being the last of the series and being within one month before the last time that Mrs. Rice saw her husband, with your Honor's permission, I would like [fol. 96] to read that because it sets the general trend of the situation and the state of mind of this man at that late date.

[Plaintiff's Exhibit H was read to the Court by Mr. Persky.]

By Mr. Persky:

Q. Mrs. Rice, I want to direct your attention to the last visit you made to Springfield with your husband. Do you remember the date of that visit?

A. It was on the 11th of March.

Q. Of what year?

A. 1944.

Q. Do you happen to recall whether there was anything special about how that visit came about, whether it was preceded by any talk between you and your husband or whether you just went there?

Mr. Morgan: Objected to.

[Omission, see Transcript, pp. 136-137:]

The Court: Would you read that question.

[The question was read.]

The Court: Was it a talk you had with your husband or did you just happen to go there?

The Witness: No, Mr. Rice just called me on the 9th of March, and he thought I was having a vacation——

The Court: Just a moment, you have answered the question. You went there because of a talk you had with him. I will admit the question.

Mr. Morgan: Exception.

The Court: Exception noted.

By Mr. Persky:

Q. It was a conversation over the telephone on the 9th of March?

A. Yes, on the 9th of March.

Q. Two days before you went to Springfield?

A. Yes.

Q. Tell the Court the conversation.

[Omission, see Transcript, p. 137.]

A. Mr. Rice thought I was having a vacation. He thought my school had closed and I had promised to come up and spend part of my vacation with him so he called me on the [fol. 97] phone and asked me why I hadn't arrived, and I said school was still in session, and didn't close until the 10th. So he said, "All right, get the very first train after school

closes," and I told him I couldn't come directly then because I had a few things to attend to before I could close the house, but I did tell him I would be on the first train in the morning as near nine as the train left. I wasn't quite sure of the train time, so he said okey he would meet me at that time.

Q. That was for the 11th of March?

A. That was for the 11th of March.

Q. You did take that train?

A. I took that train.

[Omission, see Transcript p. 138.]

The Court: I will admit it and an exception may be noted?

Q. You did take that train?

A. Yes.

Q. He met you?

A. Yes, he met me.

Q. His greeting you was as usual?

A. Very happy——

Mr. Morgan: Objected to. Same reason also.

[Omission, see Transcript, pp. 138-139.]

The Court: I will admit the question.

Mr. Morgan: Exception.

The Court: Noted.

Mr. Persky: What was the answer up to the time she was interrupted?

[The answer was read.]

Q. What was it you started to say?

A. We went to the Hotel Kimball——

Q. You said something about "very happy." Will you finish that.

A. Yes, when I met him at the train, we were both very happy to see each other. We went to the Hotel Kimball and checked in our bags, and went to lunch. Then we went for a long walk, and after that Mr. Rice had to return to work, and then he was back at the hotel around shortly after eleven and we went out at that time. Then we walked till about one o'clock, because it was a marvelous night, and we went back to the hotel and went to bed. Next morning we were up and he took me through a lovely park where there were lots of animals, birds and we really had quite a delightful time [fol. 98] that day.

Q. That was the 12th?

A. That was the 12th, and about the same thing happened the next day. We went to the movies and we went to several nice places to eat. Then I had to go back home because I hadn't finished all my school work, and I had had an invitation——

Q. That was the 13th?

A. That was the 13th.

Q. Go ahead.

A. I had an invitation to go to Maine and I told him that I hoped to get reservations on the State of Maine train and would spend a week with Mr. and Mrs. Chaney in Portland, and after that I would come back to Springfield and spend the following weekend with him, and that was the last before school opened again.

Q. What did he say to that?

A. He thought that was wonderful.

Q. You left and came to Woodbridge?

A. Yes, because I had a lot of sewing, and I had a lot of work to do.

Q. Would you be a little helpful and keep your voice up. You arrived in Woodbridge on the 13th?

A. Yes.

Q. You had planned to leave for Maine on what date?

Mr. Morgan: Same objection to all this testimony.

A. I intended to leave on Friday——

The Court: Just a moment.

[Omission, see Transcript, pp. 140-141.]

A. I intended to leave on Friday night, if I could get reservations on the train.

Q. Friday night? What date would that be? The 13th was Monday.

A. The 13th was Monday.

Q. Friday would be the 17th?

A. Yes.

Q. That is when you intended to leave?

A. Yes.

Mr. Morgan: That was for Maine?

Mr. Persky: Yes.

Q. For Maine?

A. Yes, Maine.

Q. After arriving home—I will ask you this: Did you ever—did you leave for that trip for Maine?

A. No, I couldn't get reservations. I could have had them on Monday, but I didn't go to Maine. And in the meantime——

Q. Just a moment. While you were at home, did you write to your husband?

A. Yes.

Q. You arrived the night of the 13th. How soon after that did you write to your husband?

[fol. 99] Mr. Morgan: I would like the same objection to all these questions so I wouldn't have to interrupt after each question and object, because I claim all this testimony is immaterial. I would like an exception to each question and have your Honor treat it as though each question were objected to separately, and an exception granted so as to save interrupting the witness each time.

The Court: Well, I think if you just take your objection at each question, I will rule on it.

Mr. Morgan: I object to this question that is being asked, on the ground that it is incompetent, irrelevant and immaterial and has nothing to do with these issues.

The Court: Admitted. Exception noted.

Q. Do you remember the question, or would you like to have it read to you?

Mr. Persky: Perhaps you better read it.

[The question was read.]

A. I think about two days later.

Q. Did you mail the letter?

A. Yes.

Q. Did you ever see that letter again, after you mailed it?

A. Yes.

[Omission, see Transcript, p. 142.]

Q. I hand you an envelope and ask you whether that is the envelope containing the letter you wrote to your husband two days after you arrived?

A. Yes, sir, that is.

Q. How did you come in possession of that letter afterwards?

[Omission, see Transcript, p. 143.]

Q. Answer that question.

A. It came back to me through the mail.

Q. It came back to you through the mail. I notice on the envelope, in addition to the address written in ink, which is in your handwriting, the address——

A. Yes, the address is in my handwriting.

Q. I notice in addition to the address, which is written in your handwriting, that there is in red lead pencil the words "9 Center Road, Woodbridge, Ct."

A. That's right.

Q. Is that in your handwriting?

A. No, sir.

Q. Was that on the letter at the time you mailed it?

A. No, sir.

Q. Was it on the letter when you got it back?

A. Yes, sir.

[fol. 100] Mr. Persky: I offer it.

[Omission, see Transcript, pp. 143-144.]

[The envelope referred to was received in evidence and marked Plaintiff's Exhibit I.]

Q. After receiving this letter back through the mails with this re-addressing in red pencil, what did you next do?

[Omission, see Transcript, pp. 144-145.]

Q. What was the first thing you did?

A. The first thing I did was to call Mr. Griffin.

Q. Mr. Griffin is who?

A. The man who Mr. Rice had rented a room from and lived there for eighteen months.

Q. Did you have a telephone conversation with Mr. Griffin?

A. Yes, I did.

[Omission, see Transcript, p. 145.]

Q. As a result of your telephone conversation with Mr. Griffin, who was the man of the house in which Mr. Rice lived—withdrawn. Was that over the long-distance telephone?

A. Yes.

Q. As a result of that conversation with Mr. Griffin, who was the man of the house where Mr. Rice had lived for eighteen months, what was your next step with reference to the letter?

[Omission, see Transcript, pp. 145-146.]

A. My next move was as a result of what Mr. Griffin told me, I called Mr. Morgan.

Q. Mr. Morgan was the personnel man at the firm where your husband worked?

A. Yes.

Q. And the gentleman who was a witness here earlier this afternoon?

A. That's right.

Q. You called him on the long-distance telephone?

A. Yes.

Q. As a result of that conversation what was your next step in reference to the letter?

[Omission, see Transcript, p. 146.]

A. I immediately went to Mr. Rice's lawyer, who was Attorney Tom Grimes, Thomas Grimes.

Q. That is Mr. Thomas Grimes, a member of the New Haven Bar?

A. Yes.

Q. And whose office is at 42 Church Street, as I remember it?

A. That's right.

Q. As a result of the conversation you had with Mr. Grimes, what did you do?

[Omission, see Transcript, p. 146.]

[fol. 101] A. Then I went to Springfield and went to the bank where Mr. Rice banked.

Q. When did you go to Springfield? Let's take it first—how many days after or how long after you received the letter and had these various telephone conversations and the consultation with Mr. Grimes was it you went to Springfield?

A. It was three days later.

Q. The telephone conversations with Mr. Griffin and Mr. Morgan were both on the day you received the letter back?

A. That's right, Friday night.

Q. Your conversation with Mr. Grimes was when?
A. Saturday morning.

[Omission, see Transcript, p. 147.]

Q. Having talked to Mr. Grimes on Saturday morning, you went to Springfield on what day?

[Omission, see Transcript, p. 147.]

A. The following Monday.
Q. On Monday.

[Omission, see Transcript, p. 147.]

Q. When you arrived in Springfield, what did you first do?

A. I went to the bank to inquire if Mr. Rice had taken any money from the bank because he had disappeared and I didn't know where he was, and I didn't know whether he had any money with him, and I knew he wasn't feeling well, and they told me that he had withdrawn his money from the bank, and that he did have enough money with him to last him four months.

Q. After the conversation at the bank, where did you next go?

[Omission, see Transcript, p. 148.]

A. I went to the Post Office to see if he had left any forwarding address, and he had not.

Q. After your visit to the Post Office, where did you go?

[Omission, see Transcript, p. 148.]

A. I went to Mr. Griffin's home, but he wasn't there.
Q. So you didn't see him?
A. I didn't see him.
Q. Did you see Mrs. Griffin?
A. No.
Q. Then where did you go from Mrs. Griffin's home?

[Omission, see Transcript, p. 148.]

[fol. 102] A. I went to the railroad station to the Express Office to see if I could find out where Mr. Rice's trunks had been sent and they couldn't help me there, but as I passed the baggage window, I asked there if they were holding a trunk that belonged to Mr. H. N. Rice with Lieutenant H. N. Rice stamped on three sides of it, and with that the boy said

no, they weren't holding a trunk there, but he looked at the records and found a trunk had been shipped out of there. It was Mr. Rice's handwriting that had signed the slip.

Q. Did the slip indicate where the trunk had been shipped to?

A. Yes.

Q. Where?

A. —.

[Omission, see Transcript, pp. 149-150.]

Q. After your visit to the railroad station and your talk to the baggageman, whatever it was you found there, what did you then do?

[Omission, see Transcript, pp. 150-151.]

A. I became so dazed and so bewildered, I didn't know what to think, and I travelled around Springfield for a number of hours.

The Court: Did you see the baggage?

The Witness: I saw the slip that Mr. Rice signed. I saw his handwriting, and the boy asked me if that was the signature that I was looking for and I said yes, that was Mr. Rice's signature.

The Court: That had the address on it?

The Witness: Reno, Reno, Nevada.

Q. You walked around Springfield for several hours, you said?

A. For several hours.

Q. And then?

A. Well——

[Omission, see Transcript, p. 151.]

A. I just don't know how I ever got back to New Haven.

[Omission, see Transcript, p. 151.]

Q. You finally did get back to New Haven?

A. I finally did come back to New Haven.

Q. Now, Mrs. Rice, this was in March, about the middle of March, 1944, that you have just been describing; is that right?

A. That is right.

Q. From March of 1944, the middle of March, 1944, and taking the period of about six weeks after that, did you [fol. 103] hear directly or indirectly from your husband?

A. No.

Q. Did you hear anything indirectly from him? Did you receive anything?

A. Well, I received this summons.

Q. Well, before the summons. That was in May.

A. Yes.

Q. Let me ask you this: During the time, prior to that time, and for eighteen months prior to that time, your husband had been sending you monthly checks of about $10 a week each?

A. That's right.

Q. Now, after your husband had disappeared in the manner you described, did you receive any further checks with your husband's signature on them?

A. Yes, for about six weeks I received——

Q. In those six weeks, how many checks did you receive?

A. I think six checks.

Q. Were they a week apart?

A. They were a week apart.

Q. And the first one was sometime after you had been to Springfield; is that right?

A. That is right.

Q. And after that for just six weeks you received a check each week?

A. That is right.

Q. Those checks were in what amount each?

A. $15.

Q. And did they come to you by mail?

A. They came to me by mail.

Q. From where?

A. Springfield.

Q. Could you from the envelope——

Mr. Morgan: Springfield?

Mr. Persky: Springfield.

Q. During those six weeks, running from the middle of March until about May?

A. That's right.

Q. Could you tell from the envelope from what office or place in Springfield they were being mailed?

A. No.

Q. Nothing on the envelope to indicate it?
A. The checks were made out in Mr. Rice's handwriting.
Q. And each of them for $15, six of them, placed one week apart?
A. That is right.
Q. Did you notice the date on the checks?
A. March 16.
Q. On one of the checks?
A. No, each check——
Q. Each check?
A. Each check was marked——
Q. March 16?
A. Yes.
Q. So that you received them during March and April and the early part of May?
A. I received them weekly.
Q. They were all dated the same day, March 16?
A. That is right.

The Court: Do you know what bank they were drawn on?

Q. As in 1944?
A. Yes.

[fol. 104] Mr. Persky: Pardon me, now your Honor asked a question?
The Witness: They were drawn on the Springfield Saving Bank, I think.
The Court: That is all.

Q. Wasn't it the West Springfield Trust Company?
A. The West Springfield Trust Company, I think it was, and Savings Bank. It was the same bank I had been receiving my checks right along from.
Q. Now, we come to the 12th of May, and I ask you whether on that day you received any documents relating to your husband?
A. Yes.
Q. From whom did you receive it?
A. From Mr. Rice's—oh, the sheriff.
Q. A sheriff?
A. Yes.
Q. The sheriff came to your house?
A. The sheriff came to my house.
Q. In Woodbridge?
A. Yes.

Q. On May 12, 1944?
A. Yes, that is right.
Q. And you were handed a paper?
A. That is right.
Q. Did you examine it?
A. No: I was so upset: He told me what the contents of the paper was.
Q. The sheriff told you?
A. Yes.

[Omission, see Transcript, pp. 154-155.]

Q. What did you do with the paper?
A. I took it immediately to Mr. Clark's office.
Q. Mr. Ralph Clark who sits on my left?
A. Yes, but he wasn't in. I gave it to Mr. Bergin.
Q. Mr. Bergin?
A. Yes.
Q. Did you subsequently discuss the contents of that paper with Mr. Clark?

[Omission, see Transcript, p. 155.]

A. Not until——

[Omission, see Transcript, p. 155.]

Mr. Persky: We can dispose of that. Do you admit the paper we are talking about was the complaint in the divorce action in Reno in the case we have been discussing here today?
Mr. Morgan: Yes, I will admit there was a paper served on her. We have admitted that, I think.
Mr. Persky: Well, you admit it now?
Mr. Morgan: Yes, we——
Mr. Persky: All right, you admitted it.
[fol. 105] The Court: Gentlemen, I think we will suspend here until ten o'clock in the morning.

[An adjournment was taken until Wednesday, November 20, 1946, at ten o'clock.]

Morning Session, Wednesday, November 20, 1946

LILLIAN RICE, the plaintiff, resumed the stand and testified further as follows:

Direct examination.

By Mr. Persky (Continued):

Q. I have just one or two more questions to ask you, Mrs. Rice. In September of 1942, when Mr. Rice left for his war job in Springfield, you have already testified about the effects of the corporation that were stored up in your house. Now, did he take all of his personal belongings with him to Springfield?

Mr. Morgan: Objected to.

[Omission, see Transcript, p. 157.]

The Court: I will permit the question.

[Omission, see Transcript, p. 158.]

Q. What was your answer?

A. No, Mr. Rice just took a change of clothes and one suit and one overcoat and a bag, a few handkerchiefs and a few socks?

Q. Where were the rest of his things?

A. At our home.

Q. Was there any time from September, 1942, to date, when he took any of the effects excepting those you have enumerated away from the home in Woodbridge?

A. That is everything he ever took from his home.

Q. And all the rest was left there?

A. All the rest were left there.

Q. And remained until the end and have never been removed by him up to the time of his death?

A. Never been removed by Mr. Rice.

Q. Among the things he left was there an automobile?

A. There was an automobile, there was two overcoats

Q. I won't have you enumerate them. It was all excepting what you have enumerated what he took with him?

A. All this tools, all his personal belonging were all there. He never took anything.

[fol. 106] Mr. Persky: That is all. You may inquire.

Mr. Morgan: Your Honor please, I make a motion to strike out all of Mrs. Rice's testimony except the testimony

to the effect that she was married in Haverhill, Massachusetts, on July 7, 1921, as being totally immaterial and having absolutely nothing to do with the issues in this case.

[Omission, see transcript, pp. 159-167.]

Mr. Morgan: Your Honor please, my friend entirely misconstrued what the basis of my motion is, apparently, I don't claim that the State of Connecticut cannot question the validity of a divorce that is granted in a foreign jurisdiction. I don't claim that a man can go into a sister state and stay their intending when he gets there to only stay six weeks, get his divorce, and have the intention all the time of going back to his former place of abode. I don't claim that at all.

[Omission, see Transcript, pp. 167-169.]

I don't know how it could have been any more permanent. That is the basis for my motion, not that I don't agree with Mr. Persky that you can attack a foreign divorce, because I know you can.

[Omission, see Transcript, pp. 169-171.]

The Court: The motion is denied.
Mr. Morgan: May I have an exception to that also?
The Court: Exception noted.

Cross-examination.

By Mr. Morgan:

Q. Mrs. Rice, what was your maiden name?
A. Lillian Pauline Day.

[Omission, see Transcript, pp. 174-173.]

Q. At the time you married Mr. Rice did you have any child that lived with you and Mr. Rice?

[Omission, see Transcript, p. 173.]

Q. By a former marriage?

[Omission, see Transcript, p. 173.]

Q. Did you have a child by a former marriage?
A. Yes, I did.

Q. Was the custody of that child in you?
A. Yes.

[Omission, see Transcript, p. 173.]

[fol. 107] Q. You stated also that you were running a school out at Woodbridge?
A. That's right.
Q. Are you a school teacher?
A. No, sir.

[Omission, see Transcript, pp. 173-174.]

Q. As I understand you, you are running this school at Woodbridge?
A. Yes, sir.
Q. And that is the property upon which you told Mr. Persky that this reconstructed barn stood?
A. Yes.
Q. Or was moved to?
A. Yes.
Q. And that is the only property, real property, that Mr. Rice had in the State of Connecticut when he went to Springfield?
A. Yes.
Q. You still live there?
A. Yes.

[Omission, see Transcript, p. 174.]

Q. You claim, as I understand you, that you are the widow of Herbert N. Rice?
A. Yes.
Q. When did you first learn that Herbert N. Rice was dead?
A. The first time Miss Malvina Pruniar called up the Scholl house and asked Dr. Scholl to notify me of his death, because she knew it would be such a shock and blow to me.

[Omission, see Transcript, p. 175.]

Mr. Morgan: . . . Will you read the question, please?

[The question was read.]

A. In the home of Dr. Scholl on the 23rd——

[Omission, see Transcript, pp. 175-176.]

Q. Will you tell me when that was. Was it the 23rd day of December, 1944?

A. I believe it was on the evening of December 23, 1944.

[Omission, see Transcript, pp. 176-178.]

Q. Mrs. Rice, when you were on the stand yesterday, and telling your story about your married life, were you trying to impress the Court with the fact—were you trying to give the Court the impression that you and Mr. Rice had always gotten along beautifully from the time you were married right down to the time he left for Reno without your knowing anything about it?

A. I had no knowledge of his leaving for Reno, and I did not try to impress the Court with anything but the truth in the relations with my husband in my home. I said it was [fol. 108] one of the happiest homes in Woodbridge, and I think any one of my neighbors or friends can testify to that.

Q. You answered the question. Do I understand you that when he went to Springfield to work—what was it you said he took with him?

A. He took a few shirts——

Q. A few shirts.

A. A few handkerchiefs, a few socks, two suits and an overcoat.

Q. Two suits, one work suit and one good suit?

A. No, he just had two good suits with him.

Q. And at no time while he worked in Springfield those two years did he remove anything else from his house?

A. Not that I know.

Q. And isn't it a fact that the reason why he went to Springfield and took only that small amount of stuff was because he and you were having difficulty and he got out of your home?

A. Oh, Mr. Rice and I had just——

Q. Just answer yes or no.

[Omission, see Transcript, pp. 179-180.]

The Court: Well, just answer the question yes or no, Mrs. Rice.

Mr. Persky: May we have the question read, please?

[The question was read.]

A. No, that wasn't so.

Q. You had difficulty with him way back in 1925, didn't you?

A. Why, no, no particular difficulty.

Q. Didn't you have some difficulty with your husband and have a lady hailed into Tom Ryan's office because you were jealous of some woman he was selling cars to?

A. I wasn't jealous of that woman; she was making a nuisance of herself.

Mr. Persky: Is this in 1925?

Mr. Morgan: 1925.

The Witness: 1925.

Q. You had her hailed into a law office because she was making a nuisance of herself?

A. Yes.

Q. That was in 1925?

A. I couldn't say when it was. It might have been.

Q. You said you are still living in the place, the only place that Herbert N. Rice had in Connecticut when he died. That is true, isn't it?

A. Yes.

Q. And you told us that he left an automobile there didn't you?

A. Yes.

[fol. 109] Q. And you told us he left a lot of things that were in your garage, filing cabinets and various other things. You said they were all over the house?

A. They still are.

Q. Weren't they all piled in the garage—right over the garage?

A. No, sir.

Q. What did they consist of?

A. They consisted of a typewriter and adding machine that is in my bed room. There is a desk in one of my school rooms, and there is another desk that is in on the balcony of my home, and there is steel cabinets in another school room. There is plenty of things you saw in my cellar. You saw all those things in my house, Mr. Morgan. You saw all the things that were in the garage. I would not attempt to name them because I don't know the names of them, but it was oil cans and machinery of different kinds—a time clock, an oil burner, and tools of all sorts that would be used in the automobile business.

Q. An oil burner to be used in the automobile business?

A. What?

Q. An oil burner, did you say?

A. Yes, I believe there was an oil burner there.

Q. You say that was Herbert Rice's stuff, or property rather than stuff, or was that the property of the Rice-Nash Corporation?

A. That was the property of the Rice-Nash Corporation.

Q. And when was the Rice-Nash Corporation formed?

[Omission, see Transcript, pp. 182-183.]

The Court: I don't think it is necessary to go that far, but there has been testimony here in regard to these oil cans and various other property used in a gasoline station or garage that I believe was stored in the garage and in the barn and other places around the home when he left to go to Springfield.

Mr. Persky: Yes, your Honor.

The Court: So it may be preliminary and I will admit it for the time being.

[Omission, see Transcript, p. 183.]

Mr. Morgan: Will you read the question, please?

[The question was read.]

A. I believe in 1936. I may be wrong about that, but I know it was perhaps sometime during or near that date.

Q. You told us your husband had been an automobile salesman for Ferguson for about five years, did you?

A. Yes.

[fol. 110] Q. Then you said he started working as a salesman in a branch, selling the Paige-Jewett for somebody by the name of Balassi?

Mr. Persky: No, that is misstating the testimony. Mr. Balassi was his first associate as a Nash dealer.

Mr. Morgan: Well, let's see.

Q. I understood you to say he was working for Ferguson first?

A. Yes.

Q. Now, what did you say about Balassi? How was he working with Balassi?

A. He and Mr. Balassi went into business together. Before then he was branch manager of the Paige-Jewett automobile.

Q. Who was?

A. Mr. Rice was.

The Court: I thought she said Paige-Buick.

The Witness: Paige-Jewett.

Q. It was after that, that Mr. Balassi left—did he leave the concern when the Nash was formed—the Rice-Nash Corporation?

A. That corporation dissolved.

Q. What corporation dissolved?

A. The Rice-Balassi. That was called the New Haven County Motors, I believe.

Q. Let me ask you: This property that you are talking about that was being stored in your house, was that the property of Herbert N. Rice or was it the property of the Rice-Nash Corporation?

Mr. Persky: She has already answered the question.

Mr. Morgan: I don't remember whether she did or not. I want to find out to be sure.

Mr. Persky: Let her answer it again.

A. Yes, that was the property of the Rice-Nash Corporation.

Q. Was the automobile that was there also the property of the Rice-Nash Corporation?

A. I don't believe so. I think it was Mr. Rice's personal property.

[Omission, see Transcript, p. 185.]

Q. Did Herbert Rice leave any property at the place where you were living when he went to Springfield?

[Omission, see Transcript, pp. 185-186.]

Q. Did he leave any other property except the clothing?

A. His automobile was sold in February and he received the check from—I believe I will have to ask Mr. York.

[fol. 111] Mr. Persky: Just a moment, don't ask him. We'll ask him.

Q. What automobile was sold in February?

A. Mr. Rice's automobile, his personal automobile.

Q. Who sold his automobile?

A. He authorized my son to sell the automobile.

Q. Who did?

A. Mr. Rice.

Q. In February of what year?

A. 1944.

Q. So in February of 1944, Mr. Rice's automobile was sold by your son; is that right?

A. That is right.

Q. So there was no automobile there belonging to Mr. Rice at the time Mr. Rice died?

A. No.

[Omission, see Transcript, p. 186.]

Q. Did Mr. Rice leave any property except that property of the Rice-Nash Corporation and the clothing that you have told us about at his home at the time that he left Springfield for Nevada?

Mr. Persky: This has been gone into over and over again. She has testified he left the property of the Rice-Nash Corporation, his clothing and his automobile. Why go over it again?

Q. What clothing did he leave?

Mr. Morgan: She said what he took with him to Springfield.

Q. What clothing did he leave at your home when he left?

A. He left shirts, handkerchiefs, socks——

Q. How many shirts?

A. Well, I don't know, he left so many.

Q. One shirt or two shirts?

A. Oh, no, just about fourteen. It might have been fourteen or fifteen. I don't know, but there were quite a number of them. Some of them——

Q. A number of shirts and a number of handkerchiefs. What else?

The Court: She said fourteen.

The Witness: I said fourteen——

The Court: No, no, I said Mr. Morgan said a number of shirts. You said fourteen. I wanted him to ask the question just as you answered it.

The Witness: It might have been fourteen. I wouldn't know.

[fol. 112] Q. Don't you know the number?

A. No, I don't really know the number, but I would say about that number.

Q. All right. Handkerchiefs. What else?

A. Socks, and pajamas, his tuxedo, three other business suits, two overcoats, shoes and neckties, all his little trinkets, his cuff links, his jewelry. He had three watches, a wrist watch—the only wrist watch he had with him was the one I gave him.

Q. Have you still possession of all that stuff or the administrator?

A. Most of it I threw away and gave away.

[Omission, see Transcript, pp. 188-189.]

Q. You didn't have any idea at any time, as I understand it, that Mr. Rice was going to Nevada?

A. I had no idea.

Q. He had never talked at any time with you about procuring a divorce from you here or otherwise?

A. Never in his life.

Q. Had you had any conference with any lawyers in Hartford concerning the possibility of the divorce between your husband and yourself?

A. Never.

Q. How many times did Mr. Rice actually come back to Woodbridge after he had gone to Springfield from the time that he left for Springfield—from the time he left for Springfield to date, how many times has he been back from Springfield to New Haven.

A. Well——

Q. To your house, I mean, to stay overnight.

A. He stayed just one night over night. Mr. Rice worked every day in the week.

Q. The answer is he stayed just one night?

A. Yes, just one night.

Mr. Persky: The rest of the question was how many times did he come there.

The Witness: He came there perhaps every six weeks.

Q. You mean he came and worked, and went back?

A. He came and did many repairs and things around the house, as many as he could do in the short length of time he was home. Sometimes he got there shortly after seven o'clock, and sometimes it was around nine.

[Omission, see Transcript, p. 190.]

By the Court:

Q. Somebody told you this about his being there?

A. Being where?

Q. Being there. You didn't see him.

A. At my home?

[fol. 113] Q. At this particular time Mr. Morgan spoke about that you said your son saw him.

A. Oh, yes, indeed, I did. My son went down to the station to bring him home.

Mr. Persky: She was just saying her neighbors and her son also watched and saw him. I ask that it stand.

Mr. Morgan: Will your Honor ask her to simply answer the questions and not——

The Court: Under those circumstances, if she saw him——

Mr. Morgan: If she saw him, I haven't any objection to it standing.

The Witness. Mr. York saw him! He is in court.

Mr. Morgan: There is no question pending. That is what I am objecting to, her volunteering information.

By Mr. Morgan:

Q. You told Mr. Persky, I think, that your first knowledge of the fact that Mr. York or Mr. Rice had gone from Springfield was when you had gone up to Springfield and gotten in touch with the baggage clerk at Springfield; is that right?

A. My first knowledge of when Mr. Rice——

[Omission, see Transcript, pp. 191-193.]

Q. When did you first learn your husband had left for Reno, Nevada?

Mr. Persky: Are you asking for the date?

Mr. Morgan: Yes, the date.

A. I believe the first inkling I had of perhaps his going to Reno was that they said his trunk was shipped on to Reno on—I believe that was March 20—if March 20 is on a Monday.

Q. That was 1944?

A. 1944.

Q. When was it you said a sheriff served some sort of paper upon you?

A. I believe it was May 12, 1944.

Q. May 12?

A. That is right.

Q. Then you consulted a lawyer?

A. Yes.

Q. And did you consult a New York lawyer as well as Mr. Clark whom you consulted in town?

A. Yes.

Q. Did you have a lawyer out in Reno, Nevada, who was [fol. 114] representing you in negotiations?

A. Yes.

Q. And then did you change that lawyer that you had——

Mr. Persky: . . .

[Omission, see Transcript, p. 194.]

Now, having successfully objected to my going into anything that passed the point where she consulted Mr. Clark, he may now not go into it on cross.

[Omission, see Transcript, pp. 194-195.]

Mr. Persky: My memory is very clear on that because I was disappointed that you were successful in your objection, but now that you have been successful I shall object to your going into it on cross.

I think if Your Honor is in any doubt, if your notes don't disclose it, the reporter will find that.

The Court: I think it was one of the few questions that were asked just before we adjourned yesterday afternoon.

Mr. Persky: It was pretty close towards the end of the afternoon, because I took the story chronologically.

The Court: Could you look that up?

[The following questions and answers were read:]

"Q. A sheriff?

A. Yes.

Q. A sheriff came to your house?

A. A sheriff came to my house.

Q. In Woodbridge?

A. Yes.

Q. On May 12, 1944?

A. Yes, that is right.

Q. And you were handed a paper?

A. That is right.

Q. Did you examine it?

A. No, I was so upset. He told me what the contents of the paper was.

Q. The sheriff told you?
A. Yes.
Q. What did he say it was?
A. He said——

"Mr. Morgan: Your Honor please, I am going to object to this line of questioning.

"Mr. Persky: Withdraw the question.

"Q. Did you take the paper anywhere?

"Mr. Morgan: I object to it anyway.
"The Court: Objection sustained."

The Court: I leave it to you to decide, Mr. Morgan.
Mr. Morgan: I didn't remember.
The Court: You objected to so many things it would be hard to tell what you did object to.
[fol. 115] Mr. Morgan: Can we take our recess now?
The Court: Yes, we will take a recess.

[A brief recess was taken at this time.]

Mr. Morgan: I haven't any further questions of Mrs. Rice.

Dallas W. Thomas, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Persky:

Q. Mr. Thomas, you know Mr. and Mrs. Herbert N. Rice, do you not?
A. I do.
Q. And Mrs. Lillian Rice?
A. I do.
Q. How long have you known them?
A. I met Herbert Rice, I believe it was, in the fall of 1920.
Q. Do you remember the occasion of Mr. Rice's marriage to Mrs. Lillian Rice?
A. I do, I was his best man.
Q. And from 1920 down to, say, February of 1944, did your acquaintanceship and friendship with Mr. Rice continue?

A. It did.
Q. And with Mrs. Rice?
A. It did.

[Omission, see Transcript, pp. 197-198.]

Q. From the time Mr. and Mrs. Rice were married until he left to go to Springfield, were you a visitor on occasions in their home?
A. Yes, sir.
Q. How frequently?
A. The year my wife and I were married, which was in 1925, the Rices lived—I believe we were in there a month and the Rices moved in a month after and we lived in the same house with the Rices for one year.
Q. After that did you visit in their home?
A. We did, and they visited in ours.

Mr. Morgan: What was the date he said he was married?
Mr. Persky: Who was married? Mr. Thomas?
Mr. Morgan: Yes.
The Witness: I was married July 25, 1925.

Q. So you visited in each other's home?
A. We did.
Q. How many times a week did these joint visits occur?
A. Well, we lived in the same house——
Q. I know, but I mean, after that.
A. It all depended.
Q. Once or twice or three times?
A. Yes, I would say an average.
Q. Of what?
A. Two or three.
Q. Two or three times?

[fol. 116] Mr. Morgan: Two or three times a week?
Mr. Persky: Yes.

Q. From that observation of them two or three times a week in your home and in their home, did you have occasion to observe their relations towards each other?
A. Yes, I did.

[Omission, see Transcript, p. 199.]

Q. What were they?
A. Very good.
Q. Now, when was the last time that you saw Mr. Rice?

A. I believe it was on a Sunday in February of 1944.

Q. And was it in New Haven?

A. It was.

Q. Was there an appointment made between you?

A. He called me on the telephone and wanted to have a late lunch.

Q. Did you have lunch with him?

A. I did.

Q. Where?

A. George and Harry's on Temple Street.

Q. How long a time did you spend together?

A. I would say between half an hour and an hour. Mr. Rice had to make a train for Springfield.

Q. I think you said that was late in February, 1944?

A. It was.

Q. Did you talk about his personal affairs and plans on that day?

[Omission, see Transcript, p. 200.]

Mr. Persky: Will you read the question, please?

[The question was read.]

Q. With relation to his business.

A. Well, we talked about things in general.

The Court: What date was that in 1944?

The Witness: I beg your pardon?

The Court: What date was that?

The Witness: I couldn't name the date

The Court: It was in February, 1944?

The Witness: February, 1944.

Q. I think earlier you said it was late in February?

A. It was on a Sunday— I believe it was a Sunday in February.

Q. Did you talk about his personal and business affairs and plans?

A. Just in a general way, as one friend—after all, I hada't seen Herb since 1942.

Mr. Morgan: What was that last answer? He hadn't seen Herb since 1942?

[fol. 117] Mr. Persky: That's right, when he went to Springfield.

Q. What did he say to you about his business plans at that time? What did he say as to what he was going to do and what he planned to do after that?

A. Well, he was in bad health. I could see that when I first met him.

Q. What did he say?

A. He told me he expected to go out west and straighten out his affairs preparatory to coming back to New Haven and opening up his Rice-Nash Agency.

Mr. Persky: That is all.

Cross-examination.

By Mr. Morgan.

Q. You say he told you he expected to go west to straighten out his affairs? That's all he said, was it?

A. Yes.

Q. Then be prepared to come back to New Haven to open his business when opportunity afforded; is that it?

[Omission, see Transcript, pp. 201-202.]

The Court: Let's get the question and answer and we will know what he said.

Mr. Persky: Mr. Reporter, will you read the last answer to my last question?

[The last question and answer in the direct examination was read.]

Q. Did he tell you how long he intended to remain in the west or anything of that sort?

A. He did not.

Q. Did he tell you when, if ever, he intended to open up the Rice-Nash ageney?

A. He did not.

Q. Did he tell you what part of the west he was going to?

A. He did not.

Q. He just simply said to you, "I am going—" What led up to that conversation? Did you tell him he was looking badly or anything of that sort?

A. I did not.

Q. How did he happen to tell you that he was going to go west to straighten out his affairs?

A. The only answer I can give you to that is that I was one of his good friends.

Q. What led to the conversation in which he told you he was going to go west? Did you ask him why he didn't take a rest or something of that sort?

A. I don't believe I did.

Q. Did he tell you when he intended to go west?

A. No.

[Omission, see Transcript, pp. 202-203.]

[fol. 118] Q. The question I am asking . . . is this: When you say that he told you that he was going west to straighten out his affairs preparatory to coming back to New Haven to open up his business in the Rice-Nash Agency, that, you say, was in February, 1944; is that right?

A. That is right.

Q. Did he tell you when, if ever, he intended to return to New Haven, as to any specific dates when he intended to return to New Haven?

[Omission, see Transcript, pp. 202-203.]

The Court: That ought to be separated.

[Omission, see Transcript, p. 204.]

Mr. Morgan: I am asking him if Mr. Rice told him if he was ever coming back to New Haven, if he intended to come back to New Haven.

The Court: Let's separate the question.

Q. Did Mr. Rice tell you when, if he ever expected to open the Nash Agency, when he would open it?

[Omission, see Transcript, p. 204.]

Mr. Morgan: That is not two questions. I am asking this witness if Mr. Rice at the time he said that told him when he would open the agency.

Mr. Persky: All right.

Q. Did he tell you when he was coming back to New Haven?

A. Did he tell me when?

Q. Yes, what date he was coming back to New Haven?

A. He didn't give me a definite date, but we were in the war and it was mutually understood——

Mr. Persky: I object to that—he didn't tell you.

The Witness: He didn't tell me.

Mr. Persky: That's enough.

Q. You say at that time we were in a war. That's what you said, isn't it?

A. Yes.

Q. And Mr. Rice was engaged at war work at Springfield, as you knew?

A. That's right.

Q. And you hadn't seen Mr. Rice since 1942 up until the date you saw him in February, 1944?

A. Not that I recollect.

Q. You have told us previously to that time you had been in the Rice house two or three times a week with Mr. and Mrs. Rice, but I didn't understand that you limited that to any time.

[fol. 119] Mr. Persky: He did. He limited it to the time he left for Springfield.

Q. As to the time he left for Springfield?

A. I couldn't be in the house with Mr. Rice when he wasn't there.

Q. No. You mean he—from the time you were married in 1925, you and your wife or Herb and his wife, you were either in his home or they were in your home on an average of two or three times a week from 1925 to 1942?

A. If I answered that way it was not so intended. We visited back and forth. In the first year of our married life it was that, and later as Herb got into his line of business and I got into mine, I had lost my father and I was busy and we didn't visit quite so frequently.

Q. As a matter of fact, what line of business were you in?

A. I am in the florist business.

Q. Are you the Mr. Thomas on Circular Avenue in Hamden?

A. I am.

Q. They were living in Woodbridge. When these less frequent visits begin? About how long did you continue visiting back and forth?

A. I believe it was about the time they moved to Woodbridge.

Q. That was in 1930?

A. That is right.

Q. Well, from 1930 to 1942 how many times did you visit the Rices at their home or they visit you at your home? I am talking about Lillian P. Rice and Herbert Rice.

A. I couldn't tell you exactly how many times.

Q. Did you visit them any more than once a year after 1930?

A. I think we did.

Q. Did you visit them more than twice a year after 1930?

A. Yes.

Q. Tell us how many times a year you visited them after 1930 up to 1942.

A. Well, approximately four times a year.

Q. You say just before Mr. Rice left you he expected to go west to straighten out his affairs preparatory to coming back to New Haven to open up the Rice-Nash Agency?

A. That is right.

Q. And that is all that he said, was it?

A. Yes.

Q. As to his plans or anything of that sort?

A. Yes.

Q. Did you ever hear from him when he was in Nevada?

A. No, sir.

Q. Did he write to you at all from the time he left Springfield up until the time of his death?

A. No, sir.

Q. So that you never heard or talked with Mr. Rice about [fol. 120] what his intentions were from February, 1944, up until Mr. Rice died?

A. May I have that question again?

Q. So that you never talked to Mr. Rice about what his intentions were from the time you met him in February, 1944, up until the date of Herbert Rice's death?

A. No.

Q. You never heard anything about him after he left for the west—from him directly, I mean.

A. No, sir.

Q. You never received any letter or any note or any telephone conversation or anything of that sort?

A. No, sir.

Q. So the last time you ever had any conversation of any description with Herbert N. Rice was on this Sunday in February of 1944?

A. That is right.

Q. The last you ever saw or talked with him?

A. That is right.

Q. How do you remember it was February, 1944?

A. Well, he work-- every Sunday.

Q. I asked you how you remember that it was a Sunday in February, 1944, rather than January, 1944, or December, 1943.

A. You mean some specific incident?

Q. No. I want to know why you are so certain that you talked with him in February, 1944, on a Sunday rather than it might have been January of 1944 or December, 1943. What makes you remember definitely it was February of 1944?

A. I don't know what makes me definitely remember.

Q. Well, do you remember definitely that it was February?

A. I do.

Q. Can you explain anything that occurred that makes you fix the date as February of 1944?

A. The only thing I do remember, we just—we work on Sunday, as you *be* aware, and this Sunday we had work to do.

Q. You have work to do every Sunday.

A. It was rather difficult for me to get away that Sunday.

Q. Well, you have work every Sunday. You worked in January on Sunday's too, didn't you?

A. This particular—I believe I remember a funeral.

Q. You think you were preparing for someone's funeral at that time?

A. I think so.

Q. But you don't—have you talked over with Mrs. Rice what date it was before you came on the stand?

A. No, sir.

Q. What?

A. No, sir.

Q. Have you talked over with Mr. Persky or Mr. Clark, either of these two men——

A. Yes, sir.

Q. Had you told them it was some time in February.

A. Yes.

Q. Did you remember the moment they asked you that [fol. 121] it was sometime in February?

A. No.

Q. Or was it suggested to you?

A. No, it wasn't.

[Omission, see Transcript, p. 209.]

Q. What I meant to ask you is this: Had you ever talked with anybody before getting in touch with either of these two lawyers about what month it was that you had the conversation with Mr. Rice?

A. No, sir.

Q. You never talked it over with Mrs. Rice?

A. No, sir.

Q. Did you ever write to Herbert N. Rice yourself from the time you saw him this Sunday in February, 1944, up to the date he died?

A. Without knowing his address?

Q. You didn't even know his address?

A. No, after I saw him in February.

Q. After you saw him in February, you didn't know where he was?

A. No, sir.

Mr. Morgan: That is all.

Redirect examination.

By Mr. Persky:

Q. You have testified to Mr. Morgan that beginning with the time the Rices moved to Woodbridge, you visited their house perhaps four times a year. Did they, during that period, visit your home at all?

A. Yes, they did.

Q. About how many times during the year did they visit you?

A. Herb used to drop in once in a while when he was in the neighborhood, and Lillian very often dropped in.

Q. How about together?

A. Well, I believe they were over several times together.

Q. During the whole period or during the year?

A. No, during the whole period.

Q. Mr. Morgan also asked you in reviewing what you had said to me about Mr. Rice saying that he was going west to settle some affairs in the west preparatory to opening or reopening the Nash Agency, is that all that he said, and I think you said yes, so I want to refresh your recollection. Do you remember something he said in connection with his going away in which he mentioned Mrs. Lillian Rice?

A. Yes, he asked me if I would go out and see Lillian once in a while and see how she was getting along.

Q. What else? Give me the exact language as you remember it. To see how she was getting along and——

A. Just kind of look out for her.

Mr. Persky: That is all.

[fol. 122] Recross-examination.

By Mr. Morgan:

Q. That was all said on that Sunday in February?

A. That is right.

Mr. Morgan: That is all.

Claude T. York, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Persky:

Q. Where do you live, Mr. York?

A. 22 Judson Avenue.

Q. Are you the Mr. York that has been referred to here having been associated with Mr. Herbert N. Rice in the Rice-Nash Corporation?

A. Yes.

Q. And in what year did you go into business with Mr. Rice?

A. 1935, September.

Q. And was that the date—the year when the corporation was organized?

A. Yes.

Q. And Mr. Rice and you owned stock in that corporation?

A. Yes.

Q. Who owned most of the stock?

A. Mr. Rice.

Q. And did you own a substantial amount of stock?

A. Yes.

Q. And there were some other qualifying stockholders, I suppose?

A. Yes.

Q. Well, do you remember the occasion at about the time when the agency was suspended—I mean when the business was suspended?

A. Yes.

Q. What year was that?

A. That was 1942, July—actually June.

Q. In June, 1942?

A. Yes.

Q. Did you discuss with Mr. Rice the idea of suspending the agency or business?

A. Yes, I did.

Q. And the reasons for it?

A. New cars were being rationed, parts were hard to get, because of their war conditions we felt it would be better to just suspend operations.

Q. Did you at that time discuss with him any plans for eventual resumption of the business?

A. Yes.

Q. At the time when you decided to suspend?

A. That is right.

Q. At the time you discussed that with him, and decided to suspend the business, did you dismantle the place of business and remove from there the corporation's equipment and other effects?

A. We did.

Q. Where were some of them put?

A. The bulk of the large units were put at Woodbridge at the home of Mr. Rice and a few items were kept at [fol. 123] Ostrander's garage on Bassett Street.

Q. Ostrander was running a garage on Bassett Street?

A. That is right.

Q. Was he doing repair work on Nash cars?

A. Yes, he was.

Q. Was he also a sub-agent of the Rice-Nash Corporation?

A. He was.

Q. Those items were left—you left with Ostrander, were they given to him or loaned to him?

A. No, they were given to him—that is, they were left there on a loan agreement.

Q. And the reason for the loan agreement was what?

A. We wanted to make sure we kept all corporate property intact so that after the war we could resume the business.

Q. Was this loan agreement oral or written?

A. It was written.

Q. I show you a document and ask you to identify it.

A. Yes, that is the one.

Q. Is that the agreement?

A. That is the one.

Mr. Persky: I offer it.

[Omission, see Transcript, p. 213.]

[Mr. Persky handed the document to the Court:]

Mr. Persky: In corroboration of the testimony of both Mrs. Rice and Mr. York.

The Court: I will admit the document.

Mr. Morgan: Exception, please.

The Court: It may be marked. Exception noted.

[The document referred to was received in evidence and marked plaintiff's Exhibit J.]

Mr. Persky: Your Honor has read the exhibit?

The Court: I have read it.

Mr. Persky: You don't care to have me read it now. It is in.

The Court: I don't think it is necessary. I would like that date. What was the date?

Mr. Persky: June 30, 1942.

Q. Do you remember that Mr. Rice eventually went to Springfield to do some war work?

A. Yes.

Q. Do you happen to remember what month he went there?

A. No, it was just before Labor—no, it was just after Labor Day—either Labor Day or just after.

Q. In 1942?
A. That is right.
Q. Did you go into the service eventually?
A. Yes.
[fol. 124] Q. When did you go into the service?
A. October, 1942.
Q. Beginning with, say, June 30, 1942 and up to October —well, June 30 and Labor Day of 1942 before Mr. Rice had gone to Springfield were you still around New Haven?
A. Yes, I was.
Q. And during that period from June 30, 1942, to Labor Day, 1942, did you see Mr. Rice?
A. Oh, yes.
Q. How frequently?
A. Almost every day.
Q. On those occasions, was there any further talk between you about the temporary suspension of the business and its eventual resumption and plans about it?
A. All those plans had been completed during the month of July.
Q. Were they referred to between June and September?
A. Oh, yes.
Q. In some of your talks?
A. Yes, sir.
Q. Now, prior to his going to Springfield, did you and Mr. and Mrs. Rice go anywhere together?
A. Yes, we went on a vacation. We went to Maine.
Q. How long did you stay——

Mr. Morgan: To Maine?
The Witness: Yes.

Q. How long did you and Mr. and Mrs. Rice remain in Maine.
A. Approximately two weeks.
Q. What was the relations between Mr. and Mrs. Rice on that occasion?

Mr. Morgan: Objected to as immaterial.

[Omission, see Transcript, p. 215.]

Mr. Persky: Will you repeat the question, Mr. Reporter, please.

[The question was read.]

A. Everything was perfectly normal. I thought we all had a fine time.

Q. When you say "normal," how — you describe their relations prior to that time in all the years you have known them?

A. Exactly the same.

Q. Well, the same as what, good, bad, or indifferent— affectionate?

A. Very affectionate and very pleasant.

Q. That was so from the time you first knew them as husband and wife down to the time of the vacation in Maine?

A. That is right.

Q. After he left for Springfield, there was a period between then and the time you entered the service, which I think you said was October, 1942——

A. Yes, sir.

Q. A period of about six weeks, or thereabouts?

[fol. 125] A. That is right.

Q. Did you see Mr. Rice during that period?

A. Yes, I did.

Q. Where?

A. I made one trip to Springfield to see him, and I saw him at his home in Woodbridge.

Q. During that period?

A. Yes.

Q. During that first six weeks?

A. Yes.

Q. On those two occasions, was the topic of your eventual resumption of business touched upon?

A. Yes.

Q. And at the time you saw him in Woodbridge, was Mrs. Rice there too?

Mr. Morgan: I wanted to object to that last question——

Mr. Persky: It has been answered.

[Omission, see Transcript, p. 217.]

Mr. Morgan: I move that it be stricken out, that question preceding the last question he asked.

Mr. Persky: What was it?

[The question was read as follows:]

"Q. On those two occasions, was the topic of your eventual resumption of business touched upon?
A. Yes."

The Court: The answer may stand.
Mr. Morgan: May I have an exception?
The Court: Exception noted.
Mr. Persky: Now will you read the last question, please?

[The last question was read.]

A. Yes.
Q. What was their relations then?

[Omission, see Transcript, p. 217.]

Q. Were they pleasant as usual?
A. Definitely pleasant, yes.
Q. At the time you saw him in Springfield was Mrs. Rice there?
A. Yes.
Q. What were their relations then?
A. Very pleasant, exactly as you would expect.

Mr. Morgan: Same objection.

Q. Did you spend much time with Mr. and Mrs. Rice——

The Court: Exception noted:

Q. Did you spend much time with Mr. and Mrs. Rice in Springfield on that day?
A. No, just a matter of hours.
Q. Did you have lunch with them?
A. Yes.
Q. Did you talk with them?
A. Surely.
Q. Was the topic of your [eventual] resumption of the business touched upon then?
A. Oh, yes.

[fol. 126] Mr. Morgan: It was or not?
The Witness: It was.

Q. Now, after you entered the service, did you ever go to Springfield to visit Mr. Rice?
A. Yes, I did.
Q. Do you remember about what month and what year that was?

A. Yes, it was in February, 1944.
Q. In February, 1944?
A. That is right.
Q. Was Mrs. Rice there then?
A. Yes.
Q. How long did you spend with them then?
A. Most of the afternoon.
Q. What were their relations towards each other?

[Omission, see Transcript, p. 218.]

Q. Answer, Mr. York.
A. Perfectly normal and pleasant.
Q. And on that occasion was there some discussion about what would happen after you left the service and he was through with his war job with relation to resumption of the business?
A. Yes, at that he felt that things might hasten along so that we would be in business before very long.
Q. Now, at any time, the last time you saw him—the last time you saw him then was in February, 1944?
A. Yes.
Q. Did you at any time after 1944, after February, 1944, receive any word from Mr. Rice indicating to you that he had changed his intention and intended to modify or change or disrupt the plans you and he had for reopening the Rice-Nash automobile business in New Haven?

[Omission, see Transcript, p. 219.]

Q. Do you understand——
A. No.
Q. Do you remember an occasion when you were in Woodbridge after the business closed and the material was stored there, where you had some conversation with Mr. Rice concerning the inconvenience of storing the stuff in his home and the possibility of storing it at the store house?
A. Yes, I do.
Q. And state that conversation.
A. Well, originally it was my idea to use a commercial warehouse, but Mr. Rice thought that we could save the expense of storage and also keep things handy so that in lots less time he could reopen the business in case I was still away.

Q. In case you were still in service, he would reopen the business awaiting your return, is that it?

A. Yes.

Mr. Persky: That is all.

[fol. 127] Cross-examination.

By Mr. Morgan:

Q. That agency was suspended in 1942, you say?

A. That's right.

Q. In July, 1942?

Mr. Persky: No, just a moment. You mean agency or business?

Mr. Morgan: The business or the agency.

Q. The business or the agency, the Rice-Nash Corporation, that company suspended doing business in July, as I understood you, in 1942, is that right?

A. We actually stopped working in June but we did have quite a bit of work to do so we kept the place open through the month of July.

Q. And you had a building that was under lease, the Rice-Nash Corporation, from a man by the name of Hoffman, didn't you?

A. That's right.

Q. How long did that lease have to run when you —

[Omission, see Transcript, pp. 220-222.]

Q. When you suspended business in 1942, July.

A. I believe it had eight or ten months to go.

Q. You said you took stuff — you took property from the corporation —

Mr. Persky: Just a minute. I don't understand that.

Mr. Morgan: Wait a minute until I have finished.

Mr. Persky: He didn't say that.

Q. You said that the corporation's property — when you suspended, part of it was taken out to Herbert Rice's home in Woodbridge. Is that right?

A. Yes.

Q. And part of it was taken to the — to a — under a loan agreement to Opperman's —

Mr. Persky: Ostrander's.

Q. (Continuing): Garage, is that right?

A. Yes.

Q. And what did you have by way of equipment or assets at the time you suspended business? What did the Rice-Nash Corporation have by way of assets?

A. Complete garage equipment.

Q. Complete garage equipment. And what did that consist of?

A. It consisted of a high pressure lubricating equipment, a lift—an electric lift—an oil burner, desks, office equipment, a time clock, small tools, a Nash Neon Sign, a cash drawer, parts, bins, and cabinets.

Q. Bins and cabinets?

A. That is right, and many small items.

Q. In order to re-establish the business of the Rice-Nash [fol. 128] Corporation you also have to have a franchise from the Nash Automobile Association, wouldn't you?

A. That is right.

Q. And how long were you in the service?

A. Three years.

Q. When did you get out of the service?

A. October, 1945.

Q. The Rice-Nash Corporation even after you got out never reopened for business, did it?

A. No, sir.

Q. It never has been reopened for business?

A. No, sir.

[Omission, see Transcript, p. 224.]

Q. At any rate, the Rice-Nash Corporation has never opened up for business since, has it?

A. Yes.

Q. I mean, it is not operating a business, the Rice-Nash Corporation?

A. That is right.

Q. Is that right?

A. That is right.

Q. Now, do you say that when you talked to Mr. Rice in 1944 that you understood from his talk that when the war was over the Rice Nash Corporation was going to open up again? Is that what I understood you to say?

A. That is true.

Q. And if you were out of the service and whether you were not out of the service would make no difference, the

corporation was going to open up for business if you were out of the service or if you were not out of the service, that Herbert Rice could open up and get cars, is that what you mean?

A. No, not particularly cars. We knew cars would be some time in coming through.

Q. When you were talking with him in 1944, which you said was some time in February, when you were having lunch with him up in Springfield, he said that he expected after the war—was that what he said?

A. Yes.

Q. After the war was over he said he expected to open the Rice-Nash Corporation business again?

A. Yes, sir.

Q. And you said that that was the last time that you ever saw him?

A. That is right.

Q. Let's see if I have you correctly on this. Herb Rice said to you after the war was over, he expected to reopen the Rice-Nash Corporation for business; is that right?

A. Yes, it is.

Q. You didn't discuss any location or anything of that sort with him at the time?

A. No, we didn't.

Q. And all of this property that was removed to Wood- [fol. 129] bridge as well as property that went to Ostrander under a loan was all property of the Rice-Nash Corporation?

A. It was.

Q. Now, do I understand you to say that insofar as you knew all the while you were in business with Mr. Rice, and you were in business with him, as I understood it, from the time the Rice-Nash Corporation started doing business in 1935, up to 1942 in July, that Herbert N. Rice never had any trouble with his wife as far as you know?

A. That is right.

Q. You never knew of any?

A. I never knew of any trouble at all.

Mr. Morgan: That is all.

Redirect examination.

By Mr. Persky:

Q. In March, 1944, did Mr. Rice still own all the stock he ever owned in the Rice-Nash Corporation?

A. Yes, he did.

Q. And at the time of his death, what was the situation?

A. He still owned the majority of the stock.

Q. He died owning a majority of the stock in the Rice-Nash Corporation?

A. Yes.

Q. So that when Mr. Morgan talks to you about who owns the stock now, whatever the situation is, that is something that followed Mr. Rice's death?

A. That is right.

Q. Now, he asked you with reference to what equipment and assets in general of the Rice-Nash Corporation there were at the Woodbridge home of Mr. and Mrs. Rice and with Ostrander. Is it so that with the exception of automobiles for sale that all of the assets and equipment and tools and everything that ever belonged to the RiceNash Corporation were in those two places?

A. No.

Q. Where was some of the rest of it?

A. The parts we sold to Ostrander when we went out of Whalley Avenue.

Q. For use in servicing cars?

A. Yes.

Q. Excepting for parts which had to be used, all of the rest of the equipment, tools, hoists, and all that business went right in those two places?

A. Yes.

Q. So that with that and some new cars or some old cars there was a completely equipped agency and service station in existence in those two places?

A. Yes.

Mr. Persky: That is all.

[fol. 130] Recross-examination.

By Mr. Morgan:

Q. Mr. York, when you met Mr. Rice in February in Springfield, February, 1944, you went there for a special purpose, didn't you?

A. Yes, I did.

Q. And when the business was suspended in July, I understood you to say that parts and various other things except the equipment you told us was in Woodbridge and the loaned equipment to Ostrander, or whatever that name is—Ostrander—was sold off, wasn't it, by the corporation?

A. The parts were sold and they were paid for, and the money was accepted by the corporation.

Q. Wasn't the purpose of your visit to Springfield—you talked about meeting him there—to divide the money between you and Mr. Rice in connection with each of your respective shares in the corporation for what had been sold in the corporation?

[Omission, see Transcript, pp. 228-230.]

The Court: I will admit the question.

[Omission, see Transcript, p. 230.]

The Court: . . . Will you read the question?

[The question was read.]

A. No.

[Omission, see Transcript, p. 230.]

Q. You said that you went up there in February, and spent the whole afternoon with Mr. Rice. Was that whole afternoon spent only in conversation or was it business and conversation?

A. Business and conversation.

Q. And was it business that ha. to do with the Rice-Nash Corporation?

A. Yes.

Q. And did it have—that business have anything to do with any shares which you or Mr. Rice may have had from any funds of the Nash Corporation?

Mr. Persky: Objected to.

[Omission, see Transcript, pp. 231-232.]

Mr. Persky: Do you remember its substance?

Mr. Morgan: Yes, what I was trying to find out was whether they were there for the purpose of dividing the cash coming out of the corporation.

Mr. Persky: Will you read the question, please?

[The question was read.]

[fol. 131] Mr. Persky: The question was read, and I know it was taken accurately, doesn't seem to have any meaning at all. That is another ground for objection.

Q. The question was this: Did that meeting have anything to do with the division of any funds of the Nash Corporation between you and Mr. Rice?

[Omission, see Transcript, p. 232.]

Mr. Persky: This conversation had been going on for months?

Mr. Morgan: Not for months then.

Mr. Persky: Oh, yes, from 1942 down.

The Court: Do you intend, Mr. Morgan, to go into this thing again?

Mr. Morgan: Not any further than that.

The Court: I will admit the question.

Mr. Persky: Exception.

The Court: Exception noted.

Mr. Morgan: Will you read the question please?

[The question was read.]

A. No.

Mr. Morgan: That is all.

[Omission, see Transcript, p. 233.]

The Court: We will take a recess until two o'clock.

[A recess was taken until two o'clock.]

Afternoon Session

Stipulations as to Certain Facts

Mr. Clark: We have no further witnesses in this case, but there were a few matters of evidence which Mr. Morgan and I discussed prior to trial and upon which we have

reached an agreement as to certain matters that might be read into the record and incorporated as part of the proceedings.

The first one was as follows: "It is agreed that Herbert N. Rice was employed at the Reno Army Air Base, Reno, Nevada, from March 25, 1944, to July 2, 1944, at which time he resigned from said employment." I would ask that be read into the record.

[fol. 132] The Court: That may go into the record. You have agreed on that?

Mr. Morgan: Yes, we have.

Mr. Clark: The second matter——

The Court: May I have the dates?

Mr. Morgan: March 25, 1944, to July 2, 1944, and on July 2 he resigned his employment at the air base at Reno, Nevada.

The Court: Proceed.

Mr. Clark: The second matter which was agreed upon that should be read into the record is as follows: "It is agreed that Herbert N. Rice was employed at the Sierra Ordnance Depot, Herlong, California from July 15, 1944, to the date of his death on December 23, 1944, said employment having been obtained by Mr. Rice upon his own personal application."

The third matter which was agreed should be read into the record is as follows: "It is agreed that during the period from July 15, 1944 to December 23, 1944, Herbert N. Rice and the defendant Hermoine Rice lived in Herlong, California."

The last matter——

The Court: Just a minute.

Mr. Morgan: The way that was agreed, "and maintained a rented bungalow in Herlong, California."

Mr. Clark: That is agreeable to me.

The Court: You want to make a change?

Mr. Morgan: Or lived in or maintained a rented bungalow in Herlong, California.

Mr. Clark: That is agreeable, your Honor.

The Court: That may go in.

Mr. Clark: The last matter agreed upon was with reference to an exhibit, and our agreement read as follows: "It is agreed that if either side shall offer in evidence a certified copy of the death certificate of Herbert N. Rice, no objection

will be made on the ground of lack of proper proof of said instrument. Any other grounds of objection are reserved to both sides."

I now offer in evidence a certified copy of the death certificate of Herbert N. Rice.

[fol. 133] The Court: I believe that will be Plaintiff's Exhibit K?

Mr. Clark: Yes, your Honor, I think so.

Mr. Morgan: I have no objection.

The Court: It may be admitted and marked Plaintiff's Exhibit K.

[The certified copy of the death certificate of Herbert N. Rice referred to was received in evidence and marked Plaintiff's Exhibit K.]

Mr. Clark: This exhibit K, if your Honor please, I would like to read to the Court. It is a document which is on a printed form filled in with typewritten answers to certain of the questions. It is Form No. 5.

[Plaintiff's Exhibit K was read to the Court by Mr. Clark.]

Mr. Clark: We rest.

[The Plaintiff rested.]

[Omission, see Transcript, pp. 236-249.]

Mr. Morgan: Have you got those depositions, Mr. Clerk?

For the convenience of the Court, I am going to have your Honor—I have copies of the deposition and if your Honor will follow the deposition, I will ask that it be placed in evidence. The first deposition——

Mr. Persky: May I ask you, as you read these depositions, go along rather slowly, because there are certain of the questions which we consider objectionable, and we are going to want to register our objection with the Court. So if you will just go along and bear with us, we will indicate our objections as we go along. Which are you going to read first?

Mr. Morgan: The first deposition I will read is the deposition of Earl G. Eddy, City of Reno, County of Washoe, State of Nevada. I will give your Honor a copy of the deposition. Will it be necessary for the reporter to take this, because I am going to offer that deposition?

Mr. Persky: In view of the fact that we intend to object to certain questions, and your Honor will have to rule, cer-

tainly it will be necessary for the reporter to take those questions and answers which are going to be made the subject of a request that your Honor rule on them.

[fol. 134] Mr. Morgan: Without reading the title of the case, this is the deposition of Earl G. Eddy.

[The deposition of Earl G. Eddy was read as follows by Mr. Morgan:]

"Questions by Mr. Furrh:

"Q. State your name.

A. Earl*y* G. Eddy.

Q. Where do you reside?

A. 3066 Plumas, Reno, Nevada.

Q. How long have you resided in Reno?

A. Nearly four years.

Q. That is Reno, Nevada?

A. Yes.

Q. What is your occupation?

A. Chief Clerk, Southern Pacific Company.

Q. Mr. Eddy, were you acquainted with Mr. Herbert N. Rice?

A. I was.

Q. When did you become acquainted with him?

A. In March, 1944.

Q. What was the extent of your acquaintance with him?

A. It developed into a personal acquaintance, we became very friendly.

Q. Over what period of time did your acquaintanceship extend?

A. Until he died in December, 1944.

Q. How often did you see him during that period?

A. I saw him every day, at least quite a bit of the time I saw him every day.

Q. Did he ever make any statements to you concerning his intentions with reference to making Nevada his home?

A. Yes, he did, definitely.

Q. What were the nature of these statements?"

[Omission, see Transcript, p. 251.]

"A. He planned to stay here permanently, he told me that he never intended to return east. He wanted to make his permanent home in Nevada.

"Q. Where were you at the time such statement was made?

A. He told me about this at different times, first, I believe, at the Southern Pacific, and later on at my home.

Q. Do you recall what gave rise to a discussion of this nature?

A. We used to discuss the fact that when I first came here I intended to go to California and stay in California.

Q. Did he indicate that he liked it here?

A. Yes.

[Omission, see Transcript, p. 252.]

"Q. Do you recall whether or not he obtained a divorce from his wife in this jurisdiction?

A. He did, yes.

Q. Do you know about when that was?

[fol. 135] A. About the first of July, or around the first of July.

Q. These statements that you have alleged that he made with reference to making this home, when were these statements made?

A. I would say that they were made before and after he obtained his divorce.

Q. Do you know where he resided here in Reno?

A. Yes, on Lake Street, in the 700 block, I believe. 741, I believe.

Q. Did he ever discuss with you any plans that he had for entering into business here in Reno?

A. Yes, he told me that he intended to enter business here."

[Omission, see Transcript, pp. 252-253.]

"Q. Did you ever have any other discussions regarding any of his plans for the future?

A. Well, in a general way. We talked about it a good many times, we talked about his locating here and staying here permanently and going into business of some sort here, and making his permanent home here.

The Counsel: That is all."

[Cross-examination on the part of the plaintiff by Mr. Robinson was read by Mr. Clark as follows:]

"Q. Mr. Eddy, how long had you resided in the State of Nevada?

A. Since 1942, December.

Q. How long have you been employed by the Southern Pacific Company?

A. Since December, 1942.

Q. Are you married, Mr. Eddy?

A. I am.

Q. Are you acquainted with the woman Mr. Rice married after he secured a divorce from Lillian P. Rice?

A. I am.

Q. When did you meet her?

A. I believe in 1944, I couldn't say exactly, I believe in July.

Q. Was that before or after his marriage to the second Mrs. Rice?

A. At the time of his marriage.

Q. Did you attend the wedding?

A. I did not.

Q. When you say at the time of his marriage, just what do you mean?

A. The same day that he was married.

Q. When did you last see the second Mrs. Rice?

A. Around the 25th of March, this year, 1946.

Q. Do you know where she is residing at the present time?

A. In the east. I do not have her present address.

Q. Have you had any correspondence with her since March, 1946?

A. No, not myself.

"Q. When you say no, not yourself, what do you mean?

"A. I believe Mrs. Eddy has. I haven't had correspond-
[fol. 136] ence with her.

Q. Do you know whether or not Mrs. Eddy has received correspondence from her since March, 1946?

A. I do not know definitely, I know that she has written.

Q. When did you first learn that you were to be a witness in this case?

A. A few days ago when I received a letter from an attorney asking if I would give a deposition, if that is the correct term.

Q. Who was that attorney?

A. I couldn't tell you, I don't have his name with me.

Q. Do you have a letter?

A. Not with me.

Q. Have you a letter at home?

A. Yes.

Q. Would you produce that letter and have it attached to this deposition?

A. I could.

Q. Did you make a copy of your answer?

A. I did.

Q. Would you bring in the copy of your answer and attach it to this deposition?

A. I will.

Q. Have you discussed the testimony that you are giving at this deposition with anyone?

A. No one except this attorney.

Q. You mean Mr. Furrh, who represents the defendant in this case?

A. Yes.

Q. When did you discuss it with him?

A. About five minutes ago.

Q. You mean immediately before you were sworn in to testify?

A. Yes.

Q. You say that some of the time you saw Mr. Rice every day?

A. Yes.

Q. During what period of time was that?

A. Well, sometime after he arrived here in 1944, until after he was married I saw him often, perhaps once every day.

Q. What were the occasions of having seen him that often?

A. I worked for the Southern Pacific Company and he usually dropped in for lunch at the news stand that Mrs. Eddy operated.

Q. Mr. Rice was not employed by the Southern Pacific Company?

A. No.

Q. Your acquaintanceship with Mr. Rice was purely a lunch counter acquaintance?

A. At first, and then it developed into a personal acquaintanceship.

"Q. Did he ever visit in your home before he divorced the first Mrs. Rice?

A. He did.

Q. Upon any of these occasions, was he accompanied by the second Mrs. Rice?

A. No, he was not.

Q. Now, after Mr. Rice secured his divorce, did you see him daily?

A. No, not daily.

Q. How often did you see him after the decree was granted?

[fol. 137] A. It is awfully hard to say the time exactly, I did see him on weekends.

Q. The decree was granted in June of 1944.

A. I thought it was July.

Q. Now, Mr. Eddy, after Mr. Rice got his divorce, he took up employment at Herlong, California?

A. Yes, he was employed at Herlong. I can't say definitely whether he was employed there then or took up employment thereafter.

Q. After his marriage to the second Mrs. Rice, Mr. Rice resided in Herlong with his new wife?

A. He resided there during the week, but kept his residence in Reno."

[Omission, see Transcript, pp. 256-257.]

The Court: Let's anticipate a moment on the next question. Will you read the next question and answer, please, Mr. Clark.

[The question and answer were read as follows:]

"Q. Where was he physically present after he married the second Mrs. Rice?

A. I can't answer that question by yes or no, during his off time he was in Reno."

[Omission, see Transcript, pp. 257-258.]

The Court: For the present I will admit it.

[Omission, see Transcript, pp. 258-259.]

[Mr. Clark continued reading as follows:]

"Q. Where was he physically present after he married the second Mrs. Rice?

A. I can't answer that question by yes or no, during his off time he was in Reno."

[Omission, see Transcript, p. 259.]

[Mr. Clark continued reading as follows:]

"Q. Do you know how much time he had off?

A. I can't say.

Q. Well, was it more than two or three times a week?

A. Yes, I believe he had weekly time off, how much on the week-ends I can't say.

Q. Well, when you say you believe he had weekly time off, are you positive that he did? Is that only a guess?

A. It may be a guess, I saw him nearly every week-end. I couldn't say definitely that I saw him every week-end he had off.

Q. During the week-ends he had off he would come to Reno?

A. Yes.

Q. But during all of his working time, which was by far the greater portion of the time, was it not, he remained in Herlong with the second Mrs. Rice?

A. Yes.

[fol. 138] Q. Did you ever visit them in Herlong?

A. I did.

Q. Q. Do you know what type of an establishment they resided in there?

A. He had a residence there, a small home.

Q. Was it furnished or unfurnished?

A. Furnished. I can't say whether it was their furniture or whose furniture it was.

Q. You don't know whose furniture it was?

A. No.

Q. Isn't it a fact, Mr. Eddy, that the furniture in the Herlong home was furniture that Mr. Rice had transported from Connecticut to Herlong?

A. I believe my previous answer answered that question. I did not know whether the house was furnished or unfurnished.

Q. In other words, you and Mr. Rice were not sufficiently close friends for that question to come up?

A. That question never came up.

Q. He did not discuss that fact with you?

A. He did not.

Q. After Mr. Rice's death, the second Mrs. Rice continued to reside in the Herlong home?

A. I believe she did, yes, still maintaining her Reno residence."

[Omission, see Transcript, pp. 260-262.]

[Mr. Clark continued reading as follows:]

"Q. Did you attend Mr. Rice's funeral?

A. I did not attend the funeral, I was at the funeral parlors before the funeral was held.

Q. Where was the funeral held?

A. Susanville.

Q. Do you know where the body was buried?

A. Westwood.

Q. And both Susanville and Westwood are in the State of California?

A. Yes.

Q. And adjacent to Herlong?

A. Yes.

Q. Do you know in what capacity Mr. Rice was employed at Herlong?

A. No, I really don't know what it was called, it was connected, I believe, with the storage department, it was, I can't say.

Q. You don't know the nature of his employment?

A. I do not.

Q. He never discussed that with you?

A. Not particularly, no.

Q. Do you know whether or not the furniture in the home occupied by Mr. and Mrs. Rice in Herlong was later disposed of by Mrs. Rice?

A. I do not know.

Q. You and your wife and the second Mrs. Rice are quite friendly, are you not?

A. We are.

Q. And you visited back and forth at each other's homes?

A. We have.

Q. How many times did you visit in Mrs. Rice's home since Mr. Rice's death?

A. I can't say.

[fol. 139] Q. How many times did you visit in the Rice home at Herlong after Mr. Rice married the second Mrs. Rice?

A. Really, I can't answer that question.

"Q. More than once?

A. I believe we were there more than once, couldn't say more than two or three times—I couldn't say, I do not know.

Q. But you visited in the Herlong home a number of times?

A. Right.

Q. Do you know the nature of the suit in which this deposition is being given?

A. Not as to any detail, no.

Q. During any of the discussions which you had with Mr. Rice regarding his desire to remain away from the East, did he ever tell you that he had real property there standing in his name?

A. Yes, I believe he did, although I do not believe he said definitely what was standing in his name.

Q. Did he ever tell you what that property consisted of?

A. No, he did not.

Q. You don't know what that property consisted of?

A. I do not.

Q. Do you know the address of the Herlong home occupied by Mr. and Mrs. Rice?

A. No, I don't know the address.

Q. State whether or not the home occupied by Mr. and Mrs. Rice in Herlong, California, was located at 406 Lassen Street.

A. I can't say.

Q. The second Mrs. Rice was also employed at Herlong, was she not?

A. She was.

"Mr. Robinson: I think that it all."

[Questions by Mr. Furrh on Redirect were read by Mr. Morgan as follows:]

"Q. Mr. Eddy, by whom was Mr. Rice employed at Herlong?

A. Well, I believe the United States Government. I think that was a Government position.

Q. What was the type of enterprise in which he was employed?

A. That base there—I couldn't answer that question definitely, I believe he was connected with the storage department.

Q. What was the general nature of the business conducted by the Government at Herlong?

A. Herlong base shipped ammunition, and had large stores of ammunition. Just what his connection was with ammunition storage, I couldn't say.

Q. Do you know whether that was a war time industry?

A. Yes.

[fol. 140] Q. Did Mr. Rice ever discuss with you the fact that he intended to take a job at Herlong prior to the time he married?

"Mr. Robinson: I object to that question as leading.

"Mr. Furrh: Go ahead.

"A. No, I don't think he did.

"Q. Did he ever discuss with you his plans with reference to the permanency of that position that he held at Herlong?

"Mr. Robinson: I object to that question as leading.

"Q. What was the nature of that discussion?

A. That the work there, that the position there was more or less indefinite, as to the period of time he might be employed.

Q. Did he indicate what he planned to do when his work there culminated?

A. Go back into Reno into business of some kind, if possible."

[The recross-examination by Mr. Robinson was read by Mr. Clark as follows:]

"Q. You still don't know what type of work he was engaged in at Herlong?

A. Could not say, Mr. Robinson, don't know, I am sure."

[Omission, see Transcript, pp. 265-267.]

The Court: We will take a recess now.

[A brief recess was taken.]

Mr. Morgan: The next deposition to be read is that of Martha S. Eddy. I will omit the caption. This is the deposition of Martha S. Eddy of the City of Reno.

[The questions by Mr. Furrh were read by Mr. Morgan:]

"Q. Will you state your name?

A. Martha S. Eddy.

Q. Where do you reside?
A. 3066 Plumas Street, in Reno.
Q. Washoe County, Nevada?
A. That is right, just outside the city limits.
Q. Are you employed?
A. Not at present.
Q. What is your occupation?
A. I was manager of the Southern Pacific Fountain and Lunch Counter at the Southern Pacific, when I met Mr.——

"Mr. Robinson: I think the record should show that the witness is volunteering information.

"A. I am a housewife, though.
Q. Were you acquainted with Herbert M. Rice.
A. Yes.
Q. When did you become acquainted with him?
[fol. 141] A. Sometime during March.
Q. Of what year?
A. 1944.
Q. How did you become acquainted with him?
A. He used to come up to the stand and buy milk shakes every day.
Q. Where is the stand located?
A. In the Southern Pacific depot.
Q. And what connection did you have with this stand?
A. I was manager.
Q. Did you ever see Mr. Rice at any place other than the stand?
A. Yes, I have seen him in my home and his home.
Q. What do you mean by your home?
A. 3066 Plumas Street.
Q. Was he in your home on one occasion or more?
A. More than one, I couldn't say just how many.
Q. You state that you visited him in his home?
A. That is right.
Q. What do you mean by his home?
A. He stayed on Lake Street, I visited him there.
Q. Lake Street in what state?
A. Reno, Nevada.

"Q. Over what period of time were you acquainted with Mr. Rice?
A. I met him in March, and knew him until he passed away on the 23rd of December.
Q. Of what year?

A. 1944.

Q. Did Mr. Rice ever make any statement to you or make statements in your presence with reference to his intention to make Nevada his permanent home?

A. Yes, he did.

Q. Where did he make those statements?

A. Well, he used to talk about it at the stand when we were together, he used to talk about the kind of a home he would build.

Q. Any place else he would make those statements?

A. No——

Q. Only at the stand?

A. I think so.

Q. And what was the nature of his statements?"

[Omission, see Transcript, p. 269.]

"A. He used to talk about how he liked it here and how he was going to always live in Nevada, and how he was going to build his home with knotty pine walls.

"Q. Where did he say he was going to build his home?

A. In Reno.

Q. Did he ever make any other statements in your presence with reference to his plans for the future?

A. Only that he intended to stay west, that he was going to live in Nevada and that he was not going east again.

Q. Where was Mr. Rice employed at the time you knew him?

A. At the Reno Army Air Base. I am positive of that, at least he said so.

Q. Was he employed anywhere else?

[fol. 142] A. He went to Herlong, California, and worked out there in some store.

Q. Do you know who employed him there?

A. I believe it was the Ordnance—I can't swear.

Q. Did he ever make any statements in your presence as to why he was going to Herlong? I suggest the question can be answered by yes or no.

A. Yes.

Q. State what he stated.

"Mr. Robinson: I object on the same ground that I have heretofore interposed with reference to any statement made by the decedent, and upon the further ground that no foundation was laid for the testimony sought to be elicited by the question.

"A. The Army Air Base was closing at that time, and he could find employment to better himself at the Ordnance Depot at Herlong. That is what he told me—I don't know if his job was abolished there——

Q. Did he ever make any statement that he intended to remain permanently at Herlong?"

Mr. Persky: That is objected to because the answer doesn't quote anybody. She was just giving a conclusion; she was not quoting any statement.

Mr. Morgan: The question is. "Did he ever make any statement that he intended to remain permanently at Herlong?" And that answer is an answer to that question.

Mr. Persky: We are not objecting to the question.

Mr. Morgan: I know. I claim that answer is based upon the question, as to what he said.

Mr. Persky: Read the answer. I am going to move it be stricken out.

"A. He intended to come back here when his work was finished there."

Mr. Persky: I move that be stricken out because it is apparently the witness's own conclusion, she is not quoting what he said.

The Court: It may be stricken out.

Mr. Morgan: May I have an exception because I claim that is based upon the question.

Mr. Clark: No, she didn't answer that.

[fol. 143] The Court: I will strike it out.

Mr. Morgan: May I have the benefit of an exception?

The Court: Exception noted.

[Mr. Morgan continued reading as follows:]

"Q. Did you ever visit with Mr. Rice at his Lake Street residence in Reno?

A. Yes, I did.

Q. Whose home is that, do you know?

A. I think, I believe the address is 70 Lake Street and that it is Mrs. Mattson's, but I can't swear.

Q. For your information, Mrs. Eddy, the record shows that Mr. Rice was divorced from the first Mrs. Rice on June 13, 1944. Did he make any of these statements, with reference to making Nevada his permanent home, which

you have heretofore testified to, before the date of his divorce?

A. He sure did.

Q. Did he make any such statements after his divorce?

A. He just always talked about it casually.

Q. After he was divorced?

A. Yes, just casually before and after."

[The cross-examination on the part of the plaintiff by Mr. Robinson was read by Mr. Clark:]

"Q. You are personally acquainted with the second Mrs. Rice?

A. Yes.

Q. And you are quite friendly with her?

A. I have seen her on different occasions, but I haven't seen her for some time.

Q. But you are quite friendly with the second Mrs. Rice, are you not?

A. Yes.

Q. You have visited in her home?

A. I have.

Q. You have corresponded with her?

A. Not too much.

Q. You are still in correspondence with her?

A. I have had one card from her since she left here.

Q. Only one card?

A. One card.

Q. No letters?

A. No letters.

Q. If it be a fact that Mr. Eddy testified that you had received a letter or letters from Mrs. Rice, would that be untrue?"

Mr. Morgan: That is objected to. It is attempting to cross-examine on a statement made by somebody else other than the witness. It is not proper cross-examination.

Mr. Clark: We claim it, your honor please.

Mr. Morgan: I move it go out.

Mr. Clark: The answer was "No, it wouldn't be."

Mr. Morgan: You are asking her to base her testimony as to what somebody else said——

[fol. 144] Mr. Persky: There was a conflict and we are calling that to her attention.

Mr. Morgan: It is improper cross-examination.

The Court: It doesn't matter much.
Mr. Persky: I don't think so.
The Court: I think I will permit it to stay.
Mr. Morgan: Exception.
The Court: Exception noted.

"Q. Did you receive a card or letters?
A. Well, I don't remember.
Q. Mrs. Eddy, how do you fix the date of March, 1944, when you first met Mrs. Rice?
A. Due to the fact that it was just about nine months from the time I met him until he passed away, and we spoke about it several times."

Mr. Morgan: That ought to be Mr. Rice instead of Mrs. Rice.
Mr. Persky: We can't correct the deposition.
Mr. Morgan: All right.

"Q. You and who spoke about it?
A. My husband and I.
Q. You visited with Mr. and Mrs. Rice in the Herlong home?
A. No.
Q. You have never been to Herlong?
A. I have never visited in the Herlong home.
Q. Do you know whether or not your husband has visited Mr. Rice in the Herlong home?
A. I do not.
Q. Would you say that he had?
A. I don't know.
Q. But you never have?
A. No.
Q. How often did you visit Mr. and Mrs. Rice on Lake Street?
A. I was only there once or twice.
Q. How often were they at your home?
A. Several times.
Q. More than three?
A. I can't say.
Q. Did you attend the wedding of Mr. and Mrs. Rice?
A. I did not.
Q. Did you meet the second Mrs. Rice before or after her marriage to Mr. Rice?
A. I can't remember. I don't remember.

Q. Do you know where the furniture came from that was located in the Rice home in Herlong?
A. I don't know.
Q. Mr. Rice never discussed that with you?
A. Never.
Q. He didn't discuss his personal affairs with you generally, did he?
A. No, he didn't.

"The Counsel: That is all."

[fol. 145] Mr. Morgan: I want that deposition of Mrs. Martha S. Eddy of Reno, County of Washoe, Nevada, made part of the record in this case.

Now, since we have only just about eight minutes and Mr. Persky wants to get away at 4:20, I have no objection if your honor adjourns at this time.

The Court: We will adjourn until tomorrow morning at 10 o'clock.

[An adjournment was taken until Thursday, November 20, 1946, at 10 o'clock A. M.]

Morning Session

(Thursday, November 20, 1946)

Mr. Morgan: I would like at this time to read the deposition of Laura Dell Mattson.

[Questions by Mr. Furth were read by Mr. Morgan as follows:]

"Q. State your name.
A. Mrs. Laura Dell Mattson.
Q. Each separate names?
A. Yes.
Q. Where do you reside?
A. 701 Lake Street, Reno, Nevada.
Q. How long have you resided at that address?
A. Many years.
Q. Approximately how many?
A. About twenty-five.
Q. That is 701 Lake Street, is that correct?
A. Yes.
Q. Were you acquainted with Herbert M. Rice?

A. Yes.

Q. Would you state the circumstances under which you became acquainted with him?

A. He came to my house for a room. He came to get a divorce. He took a room at my house.

Q. When was that?

A. March 23."

[Omission, see Transcript, p. 275.]

"Q. What year?

A. 1944.

Q. Did he take a room at your house?

A. Yes.

Q. How long did he have a room at your house?

A. Well, from March 23rd he had a room up until the 30th of December, after his death December 23rd.

Q. Of what year?

A. December 23, 1944.

Q. Did he have any belongings at your house?

A. Yes.

Q. What were those belongings?

A. Locked steel trunk, flat trunk, cartons of things tied around with rope, radio, and I don't know, he had books, and I don't know, he had clothes in the closet there, and he [fol. 146] had I don't know, some hats and some hat boxes with hats in them, I think, I don't know what was in those boxes.

Q. When did he bring those various personal effects to your home?

A. Well, he had them there—

Q. From the time he first came to your home?

A. Yes, he had a lot of those things.

Q. When were they removed from the house?

A. You mean the time?

Q. With respect to his death, before or after?

A. Couldn't give the date, I don't remember.

Q. Who removed his personal belongings?

A. His wife.

Q. Do you know where Mr. Rice received his mail?

A. He received it at my house.

Q. During what period of time?

A. Well, there was months and months he always got his mail at my house.

Q. Was Mr. Rice employed in Reno?

A. Not in Reno. In Herlong, California.

Q. Do you know what he did there?

A. I believe he was commissary man in the store.

Q. Who was he employed by?

A. The Sierra Ordnance Company, depot or something like that.

Q. Did he have his room at 701 Lake Street during the time he was employed by the Sierra Ordnance at Herlong?

A. Yes.

Q. Mrs. Mattson, did Mr. Rice ever make any statement to you or in your presence with reference to his intention of making Nevada his permanent home?

A. Well, he always talked that way."

Mr. Persky: We press the objection made by Mr. Furrh. It is not responsive.

Mr. Morgan: I think it is responsive, "he always talked that way."

Mr. Persky: Always talked that way? Did he make any statement——

Mr. Morgan. "Did he make any statement to you with reference to his intention of making Nevada his permanent home?" "He always talked that way."

Mr. Persky: I want to call your attention to the fact that your representative there wanted it stricken out too.

Mr. Morgan: Well, all right, I don't want it stricken out.

Mr. Persky: I move Mr. Morgan's representative's motion be granted and that the answer be stricken out.

[fol. 147] Mr. Morgan. I claim that question and answer. I won't fight over it one way or the other.

The Court: He has asked for it. He is the one taking the deposition.

Mr. Morgan: He was taking the deposition on my behalf. If your honor wants, you can strike out.

The Court: It may be stricken out.

Q. What did he say with reference to making Nevada his permanent home?"

Mr. Morgan: There is an objection by Mr. Robinson.

Mr. Persky: We don't press that objection.

"A. He was very fond of it here, he liked the climate and liked the people. He always enjoyed himself when he went out here. I don't remember his exact words.

Q. Where were these statements made?

A. Right in our house.

Q. Were they made on more than one occasion?

A. I don't know.

Q. Do you remember whether he made statements like those on more than one occasion?

A. He always talked like that with my husband and I.

Q. Were those statements made before or after his divorce from the first Mrs. Rice?

A. From the first time he came to my place he always was in love with Nevada, he always talked about how much he liked it here and how much he was enjoying it and how pleased he was with the climate and with his work. I never heard him run down Nevada once.

Q. Mrs. Mattson, for your information the record shows that he was divorced on June 3, 1944, and I ask you with respect to the time of that divorce, did you ever hear him make any statements after that date indicating that he intended to make Nevada his permanent home?"

Mr. Clark: Objection not pressed.

"Q. That would be from June 3, 1944, up to the time of his death?

A. You mean for a date or time?

Q. At any time after his divorce from his first wife.

A. Well, he always intended to live out here."

[Omission, see Transcript, pp. 279-281.]

[fol. 148] [Mr. Morgan continued reading as follows:]

"Q. Those statements were made both before and after his divorce?

A. Yes."

[The cross-examination by Mr. Robinson was read by Mr. Clark as follows:]

"Q. Did Mr. Rice talk about anything else aside from his love for this state and desire to remain here?

A. He talked about his work, the way people treated him at Herlong———

Q. What else?

A. Don't just know what we talked about.

Q. You can't recall any other conversation other than Mr. Rice was continually talking about the State of Nevada and his desire to remain in the State of Nevada?

A. He talked about being a lieutenant in the other World War, and he talked about other things. Didn't always talk with him every time he came in the house.

Q. But the thing that stands out more clearly in your mind was his love for the State of Nevada and his desire to stay here'?

A. Yes, I heard him say that many times.

Q. When did you first learn that you were going to be a witness in this case, Mrs. Mattson?

A. Well, about two days ago.

Q. Who told you?

A. Some of the girls of this office. I guess it was Ayers, Pike & McLaughlin, told me to come down at two o'clock today.

"Q. Did you discuss your testimony with any person before giving this deposition?

A. No, I did not.

Q. Mr. Furrh, who has been asked to question you on behalf of Ayers, Pike & McLaughlin, did not question you before?

A. Yes.

Q. You wish to correct your testimony to the effect that you did talk with someone?

A. Yes, I did speak with Mr. Furrh when I first came down here.

Q. You mean you talked to Mr. Furrh before giving your deposition?

A. Yes.

Q. At the time you talked to Mr. Furrh, did you talk about what your testimony was going to be?

A. No.

Q. Mr. Furrh did not know what you were going to testify before you were sworn?

A. He did not know.

Q. Do you know what you talked to him about?

A. About the dates. I didn't say anything—yes, I discussed this with Mr. Furrh.

Q. You did discuss your entire testimony with Mr. Furrh? [fol. 149] A. I don't know whether you would call it the entire testimony.

Q. You know some of these questions were the same?

A. Somewhat."

[Omission, see Transcript, pp. 283-284.]

"Q. Now, Mrs. Mattson, you had previously discussed this matter with me?

A. I don't know. Have I talked to you about it?

Q. Do you recall that in October of last year or thereabouts I called you on the telephone and inquired of you with reference to Mr. Rice, concerning the fact that Mr. Rice stayed at your home?

A. Yes, I do not really know what the conversation was——

Q. Isn't it a fact that I called you twice on the telephone in connection with this particular matter?

A. When was the other time?

Q. During the fall of 1945, last year.

A. Well, I guess you did if you say so.

Q. Isn't it a fact?

A. Why, you may remember——

Q. Upon one of these occasions, Mrs. Mattson, did you not tell me, in substance, that Mr. Rice resided at your home from March 23, 1944 up until June 13, 1944, when he secured, and that he continued to reside there up until the time of his marriage to the second Mrs. Rice, which was July 3?

A. Yes, that was July 3.

Q. Did you attend the wedding?

A. No.

"Q. Isn't it a fact that at that time when you had this conversation with me, you advised me that except for weekend visits and occasional visits, that Mr. Rice no longer resided at your home after his marriage to the second Mrs. Rice?

A. No, he did not reside at Herlong. He came in all the time and made my place his home, bathed, and changed his clothes——

Q. No different from any other roomer?

A. Yes, he was. We were very good friends, he had a lot of his things there at our place, and all his mail came to our house.

Q. How do you know all his mail came to your house?

A. I don't know.

Q. As a matter of fact, all you know is that some mail came to your home addressed to Mr. Rice?

A. I can't swear whether he had a lot more mail or not. What came, I forwarded.

Q. You do not know whether or not Mr. Rice received mail at Herlong, do you?

A. I do not.

[fol. 150] Q. So when you testified previously that all of Mr. Rice's mail came to your house, you were in error in that respect?

A. I guess I was.

Q. What room did Mr. Rice occupy in your home during the time that he resided there, from March 23, 1944, to June 13, 1944?

A. Why, he had a room on the north.

"Q. How much did Mr. Rice pay you for that room a week?

A. Seven and a half dollars per week.

Q. After Mr. Rice took up his residence in Herlong, California, did he continue to pay you weekly rates for that room?

A. He gave me a certain amount on the rate he had been paying.

Q. He did not rent the room for the week?

A. But yes. He had the privilege of using it and he gave me a smaller amount of money.

Q. Now, that reduced amount was how much?

A. Five dollars per week.

Q. Did you rent any rooms by the day or night?

A. Yes.

Q. How much did you charge?

A. I got different rates. Those with adjoining parlors were three dollars and a half a night and that; and then I have other rooms for three dollars per night.

Q. Single or double?

A. Single.

Q. How much do you charge for a double room per day or night?

A. Three-fifty.

Q. Did the rates you have just quoted prevail in 1944 in your establishment?

A. Well, in order to have our home, I went down to the O.P.A. and had the papers all made over, so that I could have the house for my family."

[Omission, see Transcript, pp. 286-287.]

"Q. Are the rates you have just quoted for daily room rates, were those rates charged in 1944?

A. In 1944 I didn't have a transient then."

[Omission, see Transcript, p. 287.]

"Q. Now, Mrs. Mattson, during the time that Mr. Rice made his home at Herlong with the second Mrs. Rice, you rented his room to other persons, during the week?

A. Well, sometimes yes, if he had given me that privilege, and I felt free to do that.

Q. What would happen to Mr. Rice's room in the event it was occupied by other guests upon any occasion Mr. Rice would come to Reno to occupy it?

A. I would tell him that a man was there, that he had the room, and ask if he wanted to stay the night or if he [fol. 151] was traveling through. I would tell him I didn't know he was coming in. Generally, he came in on week-ends.

Q. Mr. Rice and the second Mrs. Rice came to Reno at infrequent intervals from Herlong?

A. Yes.

Q. Sometimes several weeks would go past without having them be here?

A. Not several weeks——

Q. But they didn't come every week?

A. No, they didn't come every week. They probably came two or three times a month.

Q. That would be a fair statement, the average number of times that they came to Reno after their marriage?

A. Yes.

"Q. Now, as this personal property that you say Mr. Rice left in your house, where was that kept, Mrs. Mattson?

A. He had that in the closet.

Q. The closet belonging to that room?

A. Yes, they were stored in the closet to that room.

Q. All were in the closet?

A. Well, I think his radio and some things were downstairs.

Q. His trunk was in the closet?

A. Yes.

Q. Locker was in the closet?

A. Yes.

Q. The cartons tied with rope were in the closet?

A. Yes. He had some books on engineering and other things on the shelves and they were there a long time.

Q. Did the second Mrs. Rice get those books when she came?

A. Those weren't taken until after he died, quite a long time. Those things were there quite a long time, the clothes were in the closet, and those other things, the radio—no, I think the radio was downstairs; I think we used it in the kitchen.

Q. What would the other guests of that room use for closet space when they occupied the room?

A. Well, his things didn't take up so much room—didn't take up the length of that closet—and those people don't have so much when they come for three or four days.

"Q. In 1944 you didn't have a transient, isn't that a fact?

A. Well, I had my own folks——

Q. But you have stated that you rented that room to other persons; now then, those other persons were persons who occupied the room by the week, were they not?

A. No, I don't think I let that go by the week.

Q. But you rented it to other persons?

A. Yes.

Q. And at that time you had no transient rates on the room, is that a fact?

[fol. 152] A. I don't know what I did charge on that room——

Q. Did you just testify that in 1944 you had no transient rates?

A. Yes.

Q. You so testified?

A. Yes.

Q. Now then, on the basis of that testimony that you rented that room to persons who stayed at least a week or more, did you not?

A. It don't seem to me that I rented it for very long at a time.

Q. And you used that room yourself for members of your family?

A. I have seven children, coming and going, and knew that they wouldn't touch anything.

Q. They all had free access to that room?

A. My family could go into there.

Q. The door wasn't locked?
A. No, the door wasn't locked."

[Omission, see Transcript, pp. 290-292.]

Mr. Morgan: Those three questions, "Did she ever tell you that she was involved in a lawsuit in the State of Connecticut?

A. Yes.
Q. Did she ever discuss the subject matter of that *siut* with you?
A. Why, I think she has.
Q. Did she ever ask you to be a witness on her behalf in that case?
A. No, I don't think she did." Leave them all stand.

The Court: Any objection?
Mr. Persky: No, your Honor.
The Court: The former two questions together with the question that was just asked and the answers to these former two questions which were stricken out may be permitted to stand together with the present question and answer on page 9.

"Q. Do you know when Mr. Rice first returned to work at Herlong?
A. You mean the dates approximately? Well, I think it was, I think it was right after they got married.
Q. Do you remember the date?
A. No, I *don't remember.*
Q. It is a fact, Mrs. Mattson, is it not, that there were occasions when Mr. Rice would come to Reno he would stay elsewhere other than at your home?
A. Well, I don't know whether he would or not.
Q. You don't know that to be a fact?
A. I don't know that to be a fact—he probably did."

[Omission, see Transcript, pp. 293-294.]

"Q. Do you keep a set of books on your rooms, Mrs. Mattson, that you rent to people?
A. I have cards.
[fol. 153] Q. You don't keep books showing the amount of rent you receive?
A. I have the cards.
Q. You keep those cards. Do you have the cards on Mr. Rice's room?

A. I had books at that time that—receipt books.

Q. Do you know where those books are?

A. No, I don't. I tore out a leaf and gave him a receipt.

Q. You did not keep a duplicate yourself showing the rent?

A. No, it was seven and a half dollars per week.

Q. And after Mr. Rice went to Herlong, the rate was five dollars per week?

A. He would give me twenty dollars at a time, and that would go along.

Q. That would be about four weeks or a month?

A. Yes.

Q. And in return for that money, you acted as forwarding agent for Mr. Rice's mail?

A. I didn't know I was doing anything wrong.

Q. Did you ever transmit any letter for Mr. Rice from your home to a third person?

A. No.

"Q. Did you ever mail any letters for him in Reno?

A. Never. When they came I struck out '701 Lake Street' and sent them to Herlong.

Q. Do you know what address you forwarded them to at Herlong?

A. I got it there at the house—the Herlong address—and just don't remember the number now.

Q. Would you say that the number was 406 Lassen Street?

A. That is right.

Q. That is the correct address?

A. Yes.

Q. Did you ever visit with Mr. Rice at his home in Herlong?

A. He asked me to go out many times, but I just never got out.

"The Counsel: That is all."

[The redirect examination by Mr. Furrh was read by Mr. Morgan.]

"Q. Mrs. Mattson, do you know of your own knowledge whether or not Mr. Rice was a registered voter in Washoe County, Nevada?"

[Omission, see Transcript, pp. 295-296.]

Mr. Morgan: That ends the deposition, your Honor please. I would like to have that deposition made a part of the record of the trial in this case.

[fol. 154] HERMOINE RICE, the Defendant, called as a witness on her own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Morgan:

Q. Are you the widow of Herbert N. Rice?
A. I am, sir.
Q. Were you with him when he died?
A. I was.
Q. Before you resided in Nevada, did you reside in New Haven, Connecticut?
A. Yes, sir.
Q. And what was your occupation or profession?
A. I was a registered graduate nurse.
Q. For how long a time had you been a registered graduate nurse in the State of Connecticut?
A. Since 1924, sir.
Q. Now, where did Mr. Rice die?
A. He died at Herlong, California, at 406—612 Lassen Street.
Q. At 612 Lassen Street?
A. Yes, sir.
Q. Were you present when he died?
A. Yes, sir.
Q. When Mr. Rice, it has been testified here, went from Springfield, I think it has been testified, to Reno, Nevada, and arrived there some time either the 22nd or 23rd of March in 1944, where were you working at that particular time, say from the 15th of March on up until the 23rd of March?
A. I was taking care of a patient in a home on Carmel Street, sir.
Q. In New Haven?
A. In New Haven, Connecticut.
Q. Who was the person?
A. A Mrs. Daniéle on Carmel Street.

Q. In New Haven?
A. Yes, she is present here in the court room.

[Omission, see Transcript, p. 299.]

Q. When did you first learn that Herbert N. Rice was going to the State of Nevada?
A. The early part of February, 1944.
Q. From whom did you learn it?
A. From Mr. Rice himself.
Q. In that conversation, if you can remember it, what did he say about going to Reno?
A. He said that he had spoken to an attorney in Springfield.
Q. Did he give you the attorney's name?
A. Yes, sir, a Mr. Gerald Callahan. Mr. Callahan told him to go out to Reno to get a divorce, that he would have to make it his permanent home and never come back to the State of Connecticut or the validity of it would be questioned, and he said if he was successful, he would ask me to marry him and if he wasn't—that he would remain in [fol. 155] Nevada and get some type of work to do. His intention was to live there.
Q. His intention was to live in Nevada whether he secured a divorce in Nevada or not?
A. Yes.

[Omission, see Transcript, pp. 299-300.]

Q. As I understand you——
A. It was the conversation——

[Omission, see Transcript, p. 300.]

Mr. Morgan: I asked her for the conversation.
The Court: Will you read the question and answer, please?

[The question and answer read.]

Q. Is that what he said to you, his intention was to live there?
A. Yes, sir.

The Court: He told you that?
The Witness: Yes, sir.
The Court: The answer may stand.

Q. Did he say at that time—I think you said he told you that if he was successful, he wanted you to marry him?
A. Yes.

Mr. Persky: That is not what she said. She said if he was successful he would then ask her to marry him.

Q. You mean if he were successful in obtaining a divorce?
A. Yes, in obtaining a divorce, of course.

[Omission, see Transcript, p. 301.]

Q. Did Mr. Rice say anything further concerning how or when you would be notified?
A. Yes, sir.
Q. What did he say?
A. He had written a letter and said that in the letter he would send me a telegram.
Q. Yes?
A. And in that telegram I would know, and he said how the telegram would be worded, and he would ask me to marry him in that way.
Q. And what did he tell you, if anything, would be necessary for you to do if you accepted his proposal of marriage?
A. He told me I would have to break my ties in the east and go out there with the idea of permanently living in Nevada.
Q. Now, did you learn from him by telegram or otherwise that a divorce had been granted to him?
A. Yes, sir.
Q. I will show you this telegraph dated June 13, 1944, and ask you if that is the telegram you got from Mr. Rice?
A. Yes, sir.

Mr. Morgan: I offer it.

[fol. 156] Mr. Persky: No objection.

[The telegram referred to was received in evidence and marked Defendant's Exhibit 1.]

Mr. Morgan: This telegram says "terms of contract satisfactory, mail acceptance and starting date."
Mr. Persky: How is it signed?
Mr. Morgan: "Herb."

Q. Did you know what was meant when you got that telegram?
A. I did.
Q. What did it mean to you?
A. It meant that his divorce was granted and would I accept him as a husband—if I would come out there

Q. Do you know why it was couched in that language?

A. I do, sir.

Q. Tell us why.

A. During the war emergency, only death notices and business replies or anything to do with business could be sent over the wires.

Q. Did you reply to that telegram?

A. Yes, sir.

Q. How did you reply to it?

A. I replied, "Terms of contract satisfactory. Will mail—wire my acceptance." I meant I would wire my reservations.

Q. So that you sent a telegram which said, "Terms of contract accepted; will wire reservations"?

A. Yes, sir.

Q. Now, you told us you had been a nurse, a registered nurse in this state and were for about twenty year- at that time?

A. Since 1924 until 1944. I am a registered nurse in this state at present too.

Q. When Mr. Rice told you sometime in February, 1944, that he was going to Reno for the purpose of getting a divorce and that his lawyer had told him it would be necessary for him to remain in Nevada if he didn't want his divorce questioned in the State of Connecticut, did Mr. Rice say anything to you at that time concerning his intention of returning or never returning to Connecticut?

A. Mr. Rice never intended——

Q. No, did he say anything to you? That's what I want to know. Did he tell you?

A. Yes, he told me he was never going to come back to Connecticut or the east.

Q. After you got that telegram on June 13, 1944, you say you replied by telegram?

A. I did.

Q. To him. At that time were you engaged on any case here in New Haven?

[fol. 157] A. I was still on this case.

Q. The Daniele case?

A. Yes, sir, on Carmel Street.

Q. In New Haven?

A. That is right.

Q. Where did you live in New Haven?

A. At 91 Howe Street, Apartment 102.

Q. Was that a furnished apartment or did you furnish your own furniture, linen and household things there?

A. Everything in the apartment was my own.

Q. Everything in the apartment was your own?

A. Yes, sir.

Q. After sending the telegram, did you do anything in connection with the furniture that was in your apartment in New Haven?

A. Yes, sir.

Q. What did you do?

A. Immediately called the Smedley Company and asked them to come and pack it. The dishes in barrels and crate them in the warehouse and store them so that I would have them in condition to have them shipped to Nevada when I wanted them.

[Omission, see Transcript, pp. 304-306.]

[A brief recess was taken.]

By Mr. Morgan:

Q. You have told us, Mrs. Rice, you had had your furniture crated and your dishes packed by the Smedley Company?

A. Yes, sir.

Q. Did Mr. Rice's proposal and what he said it was conditioned on had anything to do with your packing your furniture at that time?

A. Yes, sir.

[Omission, see Transcript, p. 307.]

Q. Did you belong to the New Haven Nursing Service Bureau?

A. Yes, sir.

Q. For how long a time had you belonged to that organization or been registered with it?

A. Since—from 1924 to 1944.

Q. Did you resign at the New Haven Nursing Service Bureau?

[Omission, see Transcript, pp. 307-310.]

Q. Did you resign?

A. Yes, sir, I did.

Q. And do you remember the date upon which you resigned?

A. The 28th of June, 1944.
Q. Now——

Mr. Morgan: If you have—do you have any objections to this letter going in evidence to confirm her testimony already in?

[Omission, see Transcript, pp. 310-311.]

[fol. 158] The Court: Well, as I said, it may be preliminary. I will admit it.

[Omission, see Transcript, pp. 311-312.]

[The paper referred to was received in evidence and marked Defendant's Exhibit 2.]

Mr. Morgan: I will not read it because it is short and your Honor can read it as well as I can.

Q. Now, did you go to Reno, Nevada, to accept the proposition or proposal of marriage made to you by Mr. Herbert N. Rice?
A. I did.
Q. And when did you arrive in Reno, Nevada?
A. On the morning of July 3, 1944.

[Omission, see Transcript, pp. 312-314.]

Q. You say you arrived, or did you tell us when you arrived in the State of Nevada?
A. Yes, sir, on the morning of July 3, 1944.
Q. Do you know what time your train was due, whether on the 22nd or 23rd—I mean the 2nd or 3rd of July—do you know at what time your train was due?
A. My train was due on July 2nd, in the evening, the Challenger, but it was six or seven hours late, and I arrived the next morning at 3:30 on July 3rd.
Q. Was Herbert N. Rice there to meet you?
A. He was.
Q. Did you have any talk with him about whether or not he was working at that time or was employed at that time at Reno, Nevada?
A. Yes, he did.
Q. What did he tell you about whether or not he was employed at the time you arrived?

[Omission, see Transcript, pp. 315-316.]

A. He told me he had resigned from the Army Air Base on July 2nd, 1944, that he was still on the payroll of the United States Government until he got his final check.

Q. Now, when you arrived, you said you arrived about 3:30 in the morning?

A. Yes.

Q. That is 3:30 a. m. When did you marry Herbert N. Rice?

A. In the evening of July 3rd, 1944.

Q. Where were you married?

A. In Verdi, Nevada.

Q. I show you this and ask you if this is your marriage certificate?

A. That is, sir.

[Omission, see Transcript, pp. 316-317.]

[fol. 159] The Court: It may be marked Defendant's Exhibit 3.

[The paper referred to was received in evidence and marked Defendant's Exhibit 3.]

[Omission, see Transcript, p. 317.]

Q. Was your honeymoon spent in Nevada or elsewhere?

A. It was spent all the time in Nevada.

Mr. Persky: May I have the last question and answer?

[The question and answer were read.]

Q. It has been testified in this case that your husband went to Herlong, California, on July 15 and we have agreed that that was so, 1944. Do you know from your own knowledge what Herlong, California, consisted of?

A. Yes, sir.

Q. What was it that was there?

A. Herlong, California, was an ammunition depot, a storage depot and ordnance. It was a vital spot during the war, and it was also an Italian War Prisoners camp, and we had a hospital there—it was a regular army post with barracks and all that sort of thing.

Q. You say it was an Italian Prisoners—you mean prisoners of war or people who were in a concentration camp?

A. They were prisoners of war that had taken allegiance to our country.

[Omission, see Transcript, p. 318.]

Q. Will you tell us where Herlong, California, was situated—I mean with reference to any main road.

A. Herlong, California of the Sierra Ordnance Depot was situated seven miles in from the main highway between Reno and Susanville in the desert.

Q. Were there any civilian houses at all in Herlong, California?

A. No, sir.

Q. Was there anything else there in Herlong, except this ordnance depot—the Sierra Ordnance—I will get the correct name of it for you—the Sierra Ordnance Depot?

A. That's right.

Q. That is the only thing that was there?

A. That's all. It was an Army post totally, an Army post with civilian employees under the government, and war prisoners and our own soldiers and maintained by the government, and I was under the government.

Q. Through what means did your husband and you obtain employment in Herlong, California?

[fol. 160] Mr. Persky: May I have that question read, please?

[The question was read.]

Q. I will state that we have agreed he made application for work there, but to whom does any application for work in Herlong have to be addressed? Who did you have to see?

A. We were recruited through the federal agency in Reno, Nevada, the United States Employment agency.

Q. Before you had gone or Mr. Rice had gone to Herlong for the purpose of working there, did you have any talk with Mr. Rice concerning what if any bearing it might have on permanent residence in Nevada?

A. Yes, sir.

Q. What was that talk?

A. Mr. Rice had been in to see Mr. McLaughlin, his attorney, in Reno——

Mr. Persky: Just a moment——

Q. I am asking you what Mr. Rice told you. Tell us what he told you?

A. Mr. Rice told me this.

Q. All right.

A. That he had been in to see Mr. McLaughlin even before his divorce and asked him if a job in Herlong would have any bearing on his residence in Reno, and he said no, that an Army depot would not make any difference to a Reno residence because that could not be called your permanent home.

Q. And when did you first go for the purpose of seeing about any type of work in Herlong—you with Mr. Rice?

A. Mr. Rice and I went into the United States Employment Agency on July 10, 1944.

Q. And did they ask you what your profession was?

A. Well, Mr. Rice was going out there alone—by alone I mean he was going to do the work; I wasn't going to work, but when they found out I was a graduate nurse, they needed nurses too, so they wanted both of us to go out and look the situation over.

Q. Did they transport you or did you have to transport yourself to get out there?

A. They had an Army conveyance that took all people that they were recruiting out there to see it.

Q. There has been some testimony about your living in a bungalow. At the time you and Mr. Rice went out there, you say it was on the 10th of July?

A. Yes.

Q. And did you look the place over?

A. That's what we went out for on July 10. We went out to look the situation over and we stayed in barracks—[fol. 161] married men's barracks that night.

Q. And did you make any conditions, you and your husband, as to what you would require if you came out to work there by way of a place to live?

A. Yes, sir.

Q. And what was that?

A. I told them I wouldn't live on the post unless they would give me a unit—something better than that, because I couldn't do nursing and go back and forth to a room in a barracks.

Q. Did they give you a unit?

A. We left there to think it over.

Q. Yes.

A. And we were to call them back on Friday if we were going to accept the proposition, only with one condition, that they would give us a unit?

Q. Did they give you a unit?

A. When we arrived there on the 15th.

Q. Do I understand that before either you or Mr. Rice left Reno that Mr. Rice had told you, from what you have said, that he had consulted his attorney and had said it would have no bearing on his residence in Reno to work in Herlong?

A. Yes, sir.

Q. Did you ask Mr. Rice when you came there where he lived—where he was living?

A. Yes, sir.

Q. And where did he live?

A. He lived on 701 Lake Street, Reno, Nevada.

Q. And when you went to Reno, Nevada—when you—was all your time between the 3rd and the 15th spent on this honeymoon, except going down to Herlong and looking that place over on the 10th?

A. We went to Lake Tahoe, on the Nevada side.

Q. Did you go to that room—was that 701 Lake Street?

Mr. Persky: What was that again?

Q. I said, did you go to the room at 701 Lake Street?

A. Yes.

Q. So you knew——

A. Yes.

Q. When you went to Herlong and after having had that advice from Mr. McLaughlin, did Mr. Rice still maintain that residence, that room where he had been residing with his clothing and stuff at Reno, Nevada, 701 Lake Place?

A. He did.

Q. Did you have any conversation with him as to why he continued to pay rent on that room if his working in Herlong would have nothing—no bearing upon his residence in Reno?

A. I did.

Q. What did he tell you was the reason for maintaining the room there at Herlong at 701 Lake Street?

A. Well, he didn't know whether the job in Herlong would [fol. 162] be permanent. He didn't know if he would like it or we would like it, and we wanted a place in Reno to come back and forth if we did like it, and if we didn't, we were going to stay there and make it our home until we found a place where we could buy a house or get a house and start a guest house.

Q. Was there any housing shortage at that time in Reno?

A. Definitely so.

Q. Was this job in Herlong a war emergency job?

A. Yes, sir.

[Omission, see Transcript, pp. 322-323.]

Q. I will ask you this: Was it a permanent type of employment in Herlong, or was it a war emergency temporary employment?

[Omission, see Transcript, pp. 323-324.]

Q. Answer that question if you remember it; if you don't, the reporter will read it.

[The question was read.]

A. It was a war emergency temporary employment.

Q. You have told us you maintained that place—you and your husband maintained that room at 701 Lake Place—

Mr. Persky: Objected to, she has not testified about anything that she maintained.

Mr. Morgan: All right.

Q. Did you use—did you, with your husband, use that room at 701 Lake Place, in Reno?

A. Yes, sir.

Q. When you went to Herlong, did you leave or did he leave any clothing and a trunk and various things of that sort at Reno, Nevada?

A. Yes, sir.

Q. And did you leave clothing and hats and other things——

[Omission, see Transcript, p. 325.]

Q. What did you leave there?

[Omission, see Transcript, p. 325.]

Q. Did you both have clothing at that place?

A. Yes, sir.

Q. In Reno?

A. Yes, sir.

Q. Did you and your husband before accepting this job in Herlong or before going to work on the 15th of July, 1944, did you open any bank account in Reno?

A. Yes, sir.

Q. When did you open up a bank account in Reno and [fol. 163] where?

A. The First National Bank on First and Virginia Street on July 14, 1944.

Q. And that was the First National Bank at Reno, Nevada?

A. Yes, sir.

Q. Did your husband maintain a bank account in Reno before you got there?

A. No.

Q. Did he tell you why he did not maintain any?

Mr. Persky: Just a moment.

[Omission, see Transcript, p. 326.]

The Court: I will admit the question.

[Omission, see Transcript, pp. 326-327.]

Mr. Morgan: Will you read the question, please.

[The question was read.]

Q. Any bank account?

A. Yes, there is a suit pending from the other Mrs. Rice and he didn't want any money in the bank at that time.

Q. Is this the book showing the account that was opened in that bank?

A. Yes, sir.

Mr. Persky: What is this?

Mr. Morgan: The bank book showing there was a bank account opened on July 14th, 1944.

I don't want to put this in evidence; your Honor please.

Q. Did that bank account, joint bank account, remain in Reno, Nevada, from the time it was opened up until your husband's death?

A. It remained open after his death.

Q. In fact, that bank account, does it still remain in that bank in Reno, Nevada?

A. Not that same account.

Q. No, but I mean—

Mr. Persky: Well, I object to what is there now.

Q. I don't care anything about what is there now, but up to the date that your husband died and you had it changed into your own name in Nevada, did that bank account remain right up to his death?

A. Yes, sir, and after his death.

Q. Did your husband continue——

The Court: That was in the name of the two of them.

Mr. Morgan: Both of them—joint. This was a joint bank account in the name of H. N. and Hermoine Rice, and it starts off on July 14, 1944.

[fol. 164] Mr. Persky: You forgot to have that marked as an exhibit.

Mr. Morgan: I said I didn't want to put it in as an exhibit, because it is a bank book and she may need some money and we may have to send to Nevada to get it.

[To the witness.] I will give you that. [Handing.]

The Witness: Thank you.

Q. Did your husband continue to pay rent for the place he occupied in Reno, Nevada at 701 Lake Street?

A. Yes, sir.

Q. Up to the date of his death?

A. Yes.

Q. Did you ever have any talk with your husband about whether or not he ever intended to return to the State of Connecticut, his former domicile?

A. Yes, sir.

Q. What did he tell you about that?

A. He told me he would never return to the State of Connecticut or east; that he liked Nevada.

The Court: He what?

The Witness: He liked Nevada.

Q. Did you and your husband discuss between yourselves what you were going to do after getting out of the temporary employment at Herlong?

A. Yes, sir.

Q. Will you tell us what you and your husband discussed that you were going to do and where?

A. We fully intended to go into Reno and open up a house for guests' children—a guest house for children of divorcees, people that come out there and their children are more or less stranded.

Q. Did you and your husband try to find some place while you were working in Herlong, some place in Reno, Nevada, that was available for that kind of work?

A. I went once to one of the agencies to look at a house.

Q. Did you find any house there that was available for that sort of thing?

A. No, sir.

Q. Was there any talk between you and your husband about building any place or buying a lot in Reno?

A. ——.

[Omission, see Transcript, p. 329.]

Q. All I want is what he said as to that.

A. Mr. Rice said he would eventually build a house in Reno.

Q. Do you know whether or not your husband made any contacts with Mr. McLaughlin concerning a place where you could open such a home?

[fol. 165] Mr. Persky: Objected to as hearsay.

Q. Tell us what your husband said he had done, if anything, along that line.

[Omission, see Transcript, p. 330.]

The Court: Whatever he said to her may be admitted.

Mr. Morgan: That's what I am after.

A. He said he asked Mr. McLaughlin to keep his eyes open for a piece of property or a house that we could live in and start a guest house for children.

Q. Now, did you and Mr. Rice ever try to be made voters in the State of Nevada?

A. Yes, sir.

Q. When was it you and Mr. Rice—where you together at the time?

A. Yes, sir.

Q. When was it you and Mr. Rice tried to be made voters in the State of Nevada?

A. In October of 1944.

Q. Did you go to the place where voters were supposed to be made?

A. Yes, sir.

Q. And were you able to be made a voter in Nevada at that time?

A. No, sir.

Q. Will you tell his Honor why.

A. The residence law is continuously living in the State of Nevada for one year.

Q. Is that what they told you at that place?

A. Yes, sir.

Q. Where is your permanent home at the present time?

A. Reno, Nevada.

[Omission, see Transcript, pp. 331-332.]

Q. It has been testified to here that your husband was the principal stockholder in a concern called the Rice-Nash Corporation which was an automobile sales and service station, and it has further been testified to that that company suspended business operations in 1942—I think it was in July or August, 1942—and that there was a lot of its assets by way of grease tanks and various other things stored out in the home in Woodbridge. Did your husband in his talks with you in which he has told you he did not—that he did not ever intend to return to Connecticut, did he ever talk with you about this Rice-Nash Corporation proposition?

A. He did often, sir.

Q. What did he say about whether or not, if he said anything, about the Rice-Nash Corporation——

[Omission, see Transcript, p. 332.]

[fol. 166] Q. When did you have a conversation? After you married him?

[Omission, see Transcript, p. 332.]

A. During the time I was married to Mr. Rice, I had many conversations because I wanted to know what was going to happen to these things in Woodbridge.

[Omission, see Transcript, pp. 332-333.]

The Court: I will admit the question.

[Omission, see Transcript, pp. 333-334.]

Q. Tell us what he said.

A. He said he never intended to come back to Connecticut to open any agency, and that he wanted Mr. York to have the first chance of anything that was in the garage if he wanted it to start new busness. The reason I asked him and he said that the automobile business—cars would be coming in slowly and that there would be too much competition.

[Omission, see Transcript, pp. 334-335.]

The Court: I will admit the question.

[Omission, see Transcript, p. 335.]

The Court: The answer may stand and an exception may be noted.

By Mr. Morgan:

Q. Were you with your husband at the time he died?

[Omission, see Transcript, p. 336.]

Q. Here is a death certificate—before I go into the death certificate, at the time that he died in Herlong, California, what was your position at Herlong and his?

A. I was chief nurse at the hospital in Herlong, and Mr. Rice was what they call the storekeeper. He had charge of all the electrical equipment that was used on the post.

Q. When you went there first, what unit was assigned to you?

A. I was assigned to 406 Lassen.

Q. How long were you in that billet to which you were assigned?

A. About a month and a half.

Q. What did that consist of?

A. That first unit had one bedroom, a kitchen and dining room together, and a bath.

[fol. 167] Q. And were you assigned to a different unit somewhat later?

A. Yes, because of my position, I had to be in the hospital—in a unit that was very near the hospital, at 612 Lassen.

Q. And it was there at 612 Lassen Street that your husband died?

A. That is right, sir.

Q. Lassen—is that Lassen Street or Lassen Place?

A. It is Lassen Street.

Q. Was the work you were engaged in out there and your husband was engaged in, was that under the War Department or was it under Civilian Operations?

Mr. Persky: How many times have we to get that into the record? I object to this.

The Court: I think you have gone into it thoroughly, Mr. Morgan.

Mr. Morgan: I was going to ask——

Mr. Persky: Let's not ask the same question.

Mr. Morgan: They have introduced here a death certificate in which—they say the information was obtained from Hermoine Rice, and they have called attention to certain

features of the death certificate, the usual residence of the deceased, California, County of Lassen, city of town, Herlong.

[Omission, see Transcript, pp. 337-338.]

Q. Were you given any information as to what you had to give by way of information as to any persons who died on that post in Herlong?

Mr. Persky: That could be answered yes or no.

A. Yes.

[Omission, see Transcript, pp. 338-339.]

Q. Well, you stated that the place of death was Lassen——

A. That is right, 612 Lassen.

Q. Lassen County?

A. Yes.

Q. For the usual residence of the deceased you said California, Lassen.

A. That is right.

[Omission, see Transcript, p. 339.]

Q. Was Lassen and Herlong the place where Herbert N. Rice was residing at the time that he passed away?

A. Yes, sir.

[Omission, see Transcript, pp. 339-341.]

Mr. Morgan: If it is clear in the Court's mind that the only time he was residing there while he was working in [fol. 168] Herlong, California, then I will turn my witness over to Mr. Persky for cross-examination.

[Omission, see Transcript, p. 341.]

The Court: I think we will take the afternoon recess for lunch now. We will recess until two o'clock.

[A recess was taken until two o'clock.]

Afternoon Session

Mr. Morgan: I want to ask Mrs. Rice one or two more questions.

Direct examination.

By Mr. Morgan (Continued):

[Omission, see Transcript, p. 342.]

Q. I note on here, Mrs. Rice, the social security number under question 3F is 045-034185. Was any social security paid for employees at the Herlong Ordnance Depot?

[Omission, see Transcript, p. 343.]

The Court: I will admit the question.

[Omission, see Transcript, p. 343.]

A. No, sir, the United States Government——

Mr. Persky: Just a minute, you have answered the question.

[Omission, see Transcript, pp. 343-345.]

Mr. Morgan: Go ahead and cross-examine.

Cross-examination.

By Mr. Persky:

Q. You first learned of Mr. Rice's intended trip to Reno to get a divorce in February of 1944 on the telephone?

A. Yes, sir.

Q. And in that same telephone conversation he told you that if he were successful in getting a divorce, he was then going to ask you to marry him?

A. That is right, sir.

Q. And in that same telephone conversation he told you that it was his intention to reside permanently in Nevada and never to return to Connecticut?

A. That is right, sir.

Q. He went into all of that?

A. Yes, sir.

Q. How long was that conversation?

[fol. 169] A. Well, perhaps three to five minutes.

Q. Now, would you be able to state what date in February that was?

A. Yes, sir. It was the day he received his letter from Mr. Callahan, which was on Saturday, the 6th.

Q. Saturday the 5th?

A. Yes.

Q. Did he tell you at that time when he was going to leave for Reno?

A. As soon as he could get his reservation, sir.

Q. On February 5th, he told you as soon as he could get a reservation he would leave for Reno?

A. That is right, sir.

Q. Did you know what date he actually did leave for Reno?

A. Yes.

Q. What was that date?

A. He left for Reno on March 19, 1944, at 11 p. m. in Springfield.

Mr. Morgan: On March 20?

Mr. Persky: On March 19.

Q. Now, when he told you on the telephone on the 5th of February, 1942——

A. 1944.

Q. 1944, rather, that he intended to ask you to marry him if he were successful in obtaining a divorce, was that the first inclination you had ever had from Mr. Rice he intended to ask you at some time to marry him?

[Omission, see Transcript, pp. 346-347.]

The Court: I will admit it.

[Omission, see Transcript, p. 347.]

Mr. Persky: Will you read the question please?

[The question was read.]

A. No.

Q. You had known that before?

A. Yes, sir.

Q. How long before?

[Omission, see Transcript, p. 348.]

The Court: I will admit the question.

Mr. Morgan: Exception.

The Court: Noted.

Q. Do you know the question?
A. May I have the question again, please?

[The question was read.]

A. From 1942, August 30th, 1942.

[Omission, see Transcript, p. 349.]

Q. Were these two occasions in August—August 30, 1942, [fol. 170] and February 5, 1944, the only occasions that you and he had discussed marriage?

[Omission, see Transcript, p. 349.]

The Court: I will admit the question.

[Omission, see Transcript, p. 350.]

[The question was read.]

A. Yes, sir.
Q. Just on those two occasions?
A. On those two occasions.
Q. August 30, 1942——
A. That's right, as far as I remember.
Q. And February 5th, 1944?
A. Yes.
Q. On August 30, 1942, when he spoke about it, did he also mention divorce?
A. Yes, sir.
Q. You knew he was married?
A. Yes, sir.
Q. And what did he say to you in August, 1942, about divorce?
A. Well, he came——

Mr. Morgan: This is objected to. What possible bearing does it have? I will withdraw the objection. Let her tell what he said to her in August, 1942.

A. He came to my apartment——
Q. I didn't ask you that. I asked you what he said.
A. He said he was going to leave Mrs. Lillian Rice for the rest of his life, and he would never go back to Woodbridge to live; that he had had enough; that she had told him he was lazy—and was going——

Mr. Morgan: Let her tell the conversation. You asked for it.

A. (Continuing:) And he was going to look into a divorce.

Q. That was in August, 1942?

A. Yes, that was.

Q. And from then on until February 5, 1944, there was no conversation on that subject of your marriage?

A. No.

[Omission, see Transcript, p. 351.]

Q. He told you he would send you a telegram, if he were successful, referring to his divorce as a contract, and the granting of it as a successful termination of a business transaction and ask you to—what was it? Ask you to mail acceptance and starting date?

A. That is right.

Q. Who told you that the Western Union Telegraph Com- [fol. 171] pany would not accept at that time a telegram that would ha said that in clear English?

A. Mr. Rice did.

Q. Mr. Rice did?

A. Yes.

Q. That is all the information you had on the subject?

A. Yes, sir.

Q. He didn't tell you by any chance that he didn't want to have anybody know by reading the telegram in transmission what had occurred?

A. He didn't tell me that.

Q. Now, when you came to Nevada, as I remember it, you said he told you then several times, that you testified to, that he never intended to go back to Connecticut?

A. That is right, sir.

Q. About how many times in all?

A. Oh, perhaps several——

Q. How many?

A. Several,

Q. How many are several?

A. Seven.

Q. Seven?

A. Yes.

Q. Well, having told you that once before on the telephone in February, 1944, and having then told you that if you would come out to marry him, you would have to cut all your ties, just tell me what was the occasion of the first time

in Reno that he repeated that. Why? How did that come about?

A. The first time he told me how much he loved Nevada, how much he loved Reno, and how he liked its people and he liked its climate.

Q. And when was that? Was that when you arrived in Reno?

A. That was when I arrived in Reno at 3:30 in the morning.

Q. At 3:30 in the morning on the——

A. September 3rd—I mean July 3rd.

Q. In the railroad station in Reno?

A. No, while we were having breakfast.

Q. While you were having breakfast, he told you how much he loved Reno and its people and repeated to you that he would never return east?

A. That is right, sir.

Q. Now, having told it to you on February 5th and again on July 3rd, what was the occasion of his telling it to you the third time? How did that happen?

A. Well, I don't remember each individual conversation, Mr. Persky.

Q. Well, when he told it to you on the first two times, you didn't protest against the idea of living in Reno, did you?

A. No, sir, I did not. I went out there with the intention of marrying him.

Q. As a matter of fact, you acquiesced in it?

A. I went out with the intention of living there.

[fol.172] Q. You acquiesced in it?

A. I did.

Q. Therefore, he didn't repeat it to you the third time as a persuasion that you ought to consent to it?

A. No, I went there of my own free will.

Q. Therefore, what was the occasion of talking about that the third time?

A. I don't remember.

Q. Do you remember when the third time was?

A. No.

Q. Do you remember when the fourth time was?

A. No.

Q. Do you remember what brought up the subject the fourth time?

A. People would be in for an evening——

Q. No——

Mr. Morgan: Let her answer.

Mr. Persky: I want to know what brought it up the fourth time.

Mr. Morgan: Your Honor please, she said she can't possibly remember the specific conversation the first, second, third or fourth time.

The Court: I think she has started to answer the question.

Q. Go ahead, answer.

The Court: You answer the question as you started, Mrs. Rice.

The Witness: May I have the start of that again, please?

[The answer was read.]

A. (Continuing:) And Mr. Rice would tell how much he liked Nevada and he was really happy there. He said he had been the happiest there he had ever been in his life.

Q. And these people were in for an evening where?

A. In Herlong.

Q. That was the fourth time?

A. Yes—I don't know if it was the fourth or the third time; I don't remember.

Q. Was there any time of the fourth, fifth, sixth or seventh time that there was any special reason for his repeating to you his intention of not returning east other than what you have already stated?

A. I don't think so.

Q. Now, you said you had shipped or you have had your furniture packed for shipping west?

A. That is right, sir.

Q. How many rooms full of furniture did you have?

A. I had an efficiency apartment.

Q. How many rooms full of furniture did you have?

A. I had enough to furnish two rooms or three.

[fol. 173] Q. And was that furniture finally shipped west?

A. Yes.

Q. Under your instructions?

A. Yes, sir.

Q. Was that shipped before or after you took the train for Nevada?

A. It was shipped afterwards.

Q. How long after?

A. Well, we put in the telegram to have it shipped in September; it arrived in November.

Q. Where was it shipped to?

A. It was shipped by the way——

Q. Where was it shipped to?

A. It was shipped to Herlong, California.

Q. How many rooms were there in the bungalow you had in Herlong, California?

A. Which one? I had two, sir.

Q. You had two?

A. Yes.

Q. How long did you live in the first?

Mr. Morgan: Bungalow you mean, or the unit?

Mr. Persky: Bungalow.

A. I did't live in a bungalow, I lived in the hospital unit—I lived in a regular hospital unit.

Q. You and your husband had a bungalow, didn't you?

A. It wasn't a bungalow, sir.

Q. Didn't you testify——

Mr. Morgan: No, she didn't.

A. No, sir.

Q. What was it?

A. It was a regular Army unit.

Q. How many rooms were there in it?

A. The first one had a bedroom, dining room and kitchen combination, and a bathroom.

Q. How long did you live there?

A. I lived there from July 15 until about the middle of November.

Q. And then you moved to another one?

A. I moved to 612 Lassen, the hospital unit.

Q. How many rooms were there in that?

A. There is three bedrooms and a kitchen combination, and a bath.

Q. And were those two places furnished with your furniture?

A. The first place was furnished with Army furniture.

Q. The second place with your furniture?

A. With my furniture.

Q. Did both of those places you have mentioned contain any closets?

The Court: Answer audibly.

Q. Did those two places contain any closets? Yes or no.

A. Yes.

Q. Nevertheless, at the time that you went to Herlong, you deposited some of your clothing in a closet in a room on Lake Street, in Reno, Nevada?

A. That is right, sir.

Q. Describe that room to me.

A. The room in——

Q. Reno, Nevada.

A. It was a large room on the north side of the house.

[fol. 174] Q. How large would you say?

A. I am not very good—I don't know the dimensions.

Q. You know——

A. A regular bedroom.

Q. Just a normal bedroom?

A. Nine by——

Q. Would you say about ten feet by twelve feet or ten feet by fourteen feet, or twelve feet by fourteen feet?

A. Oh, I would say about ten by twelve—I don't know dimensions too well.

Q. Did it contain a closet?

A. Yes, sir.

Q. Was the closet locked?

A No.

Q. How big was that closet?

A. Very big.

Q. How big?

A. Well, large enough to keep a trunk and some hats in boxes, and there were some cartons with rope around them that contained books.

Q. Were there any effects in that closet belonging to people other than your husband and yourself?

A. I don't know.

Q. Didn't you look into the closet?

A. Not that particularly.

Q. You put your clothes in that closet?

A. Yes, I did.

Q. And when you put your clothes in there you didn't know whether it contained any other effects?

A. I didn't know.

Q. You didn't know?

A. No.

Q. You knew, didn't you, that during the times when you didn't visit in that room that that room was going to be occupied by other people than yourself and your husband?

A. That is right.

Q. But you left these things in that open closet in that room?

A. That is right.

Q. Do you remember exactly what you left there?

A. Yes, sir. I left——

Q. Enumerate it.

A. I left a change of clothing.

Q. One change of clothing?

A. Yes.

Q. You mean outer clothing?

A. I left a dress and various articles of underwear, but they were in the trunk.

Q. Yes.

A. In that closet.

Q. One dress?

A. A dress and shoes.

Q. And shoes?

A. And a hat. That was in a hat box.

Q. Yes.

A. And various personal underwear and sort of thing.

Q. One change of each, one hat, one suit, one pair of shoes, one pair of stockings and one change of underwear?

A. Yes.

Q. In a trunk?

A. Not the shoes—yes, all the personal things were in the trunk.

Q. Including the shoes?

A. Yes.

Q. And what date did you put those things into that trunk?

A. Well, I went to Mrs. Mattson——

Q. What date?

[Omission, see Transcript, pp. 358-359.]

[fol. 175] A. I don't know.

Q. You don't know?

A. No.

Q. Do you remember how long it was after you arrived in Reno?

A. No, sir.

Q. Do you remember how long it was before you went to Herlong?

A. I didn't put it in before I went to Herlong.

Q. Oh, you did put it in after you went to Herlong?

A. Yes.

Q. How long after you went to Herlong?

A. The first weekend that I spent in Reno.

Q. And after having put those things in that trunk at the end of the first week—the first weekend you spent in Herlong——

Mr. Morgan: No, spent in Reno.

Q. Spent in Reno, which was how long after you went to Herlong?

A. About two weeks after.

Q. Having put those things in the trunk two weeks after you went to Herlong, did they remain in that trunk any length of time?

A. Well——

Q. Yes or no.

A. No.

Q. No. Did you take them out?

A. I changed them, sir. I brought fresh clothes.

Q. How many times during that period did you change them?

A. Oh, I would say about six times.

Q. Six times you took out the dress you first put in and substituted another dress?

A. Yes, sir.

Q. In other words, when you paid a visit there, you changed into some other clothes and left that change there?

A. Yes, sir.

Q. What was the purpose of leaving this change there?

A. Well, knowing Reno and knowing the bus, it was 68 miles by bus or conveyance to Reno, and it was just a convenience. If I was going to a nightclub or anything, I would like to look a little presentable when I went.

Q. That was the sole reason for leaving it there?

A. No——

Q. Give us all your reasons.

[Omission, see Transcript, pp. 360-361.]

The Court: I will admit the question.

[Omission, see Transcript, p. 361.]

Mr. Persky: Will you read the question?

[The question was read.]

Q. Give us all your reasons for leaving that change of clothing there. You have already said you wanted to have a change there in case you came to Reno and wanted to go [fol. 176] to a nightclub. You wanted to look fresh and crisp.

A. Well, I bathed there—I took my bath there for the evening.

Q. That is part of the same, isn't it?

A. Yes.

—. Was there any other reason?

A. Well, it was my home when I went to—when I was in Reno. I used that place just as—it was my other home in Reno.

Q. It was your other home in Reno?

A. I mean my residenec in Reno. It was my residence.

Q. You don't mean your other home?

A. No, sir, I mean my home.

Q. What is the Nursing Service Bureau of New Haven, Incorporated?

A. That is a registry that sends out nurses to do special work.

Q. In other words, if there was an illness in my family and I wanted to have a nurse, I could call the Nursing Service Bureau of New Haven, Incorporated, and say that I would like to have a nurse, and they would look at their list of nurses——

A. Yes, sir.

Q. And send a nurse to me?

A. Yes, sir, that is right.

Q. Is this Nursing Service Bureau of New Haven, Incorporated the only nursing registry in New Haven?

A. No, sir.

Q. About how many nursing registries are there in New Haven?

A. Well, three or two.

The Court: Mr. Persky, is it necessary to bring out how many there are?

Mr. Persky: Yes, your Honor, as your Honor will see in a moment.

Q. You pay a fee to this registry?
A. Yes, sir.
Q. Monthly, annually, weekly or how?
A. Annually.
Q. How much?

[Omission, see Transcript, p. 363.]

A. At the time——
Q. At that time, I want.
A. At that time I was paying $10 and I think a bonus of $3.
Q. Per year?
A. Per year.
Q. And for that you were on their list?
A. That was the official registry for the American Nurses Association in the City of New Haven.
Q. So that if you were to leave New Haven to go away for a year with the intention of returning——
A. Yes, sir.
Q. You would send a letter like this because you wouldn't want to pay $13 for that year, wouldn't you?

[Omission, see Transcript, pp. 363-364.]

[fol. 177] Q. If you came back to New Haven a year after this and you wanted to again get on the list of this agency——
A. Yes.
Q. You would walk in and give them $13—what would you do?

[Omission, see Transcript, p. 364.]

The Court: I will permit it.

[Omission, see Transcript, p. 365.]

Q. What would you have to do if you came back a year from——

The Court: No, read that other question.

[The question was read.]

The Court: I think there was one question that Mr. Morgan objected to and before there was any ruling you started

on another question. I didn't rule whether it was admissible or not. I believe you asked why she resigned.

Mr. Persky: I don't recall it, your Honor.

The Court: Proceed.

A. What I would do if I came back to New Haven?

Q. And wanted to get on the list of this registry again.

A. If I wanted to get back on the registry, I would have to go in and tell them that I had been on their registry board and they would look at my credentials and then present them to the Board of Directors, to be acted upon, whether I could come back on the board here as a registrant.

Q. In order to determine whether you were a competent nurse?

A. No, sir.

Q. Supposing you wanted to come back to New Haven and nurse without having the services of this agency. Could you continue to be a nurse in New Haven?

A. Yes, sir.

Q. Following this resignat*oin*?

A. Yes, sir.

[Omission, see Transcript, p. 366.]

Q. You spent your honeymoon, I think you told us, on the Nevada side of Lake Tahoe?

A. That is correct, sir.

[Omission, see Transcript, p. 366.]

Q. Why did you say it was the Nevada side?

A. Because parf of Lake Tahoe is in the State of California, and I was a resident of Nevada.

Q. Being a resident of Nevada you felt you ought not to spend your honeymoon on the California side of the [fol. 178] lake; is that right?

A. No, sir.

Q. Why did you tell his Honor so specifically that it was on the Nevada side of Lake Tahoe?

A. Because I was asked where I spent my honeymoon.

Q. You said Lake Tahoe.

A. Nevada.

Q. No, you said the Nevada side.

[Omission, see Transcript, p. 366.]

Q. Did you say the Nevada side?

A. I did, sir.

Q. Why?
A. Because I was on the Nevada side.

[Omission, see Transcript, p. 367.]

Q. Did anybody ask you?
A. They asked me——
Q. Here?
A. Yes.
Q. Who asked you that?
A. They asked me where I spent my honeymoon.

[Omission, see Transcript, p. 367.]

Q. Did anybody ask you which side of the lake you spent your honeymoon on?
A. No, sir.
Q. You volunteered that information?
A. I told——

[Omission, see Transcript, p. 367.]

Q. On July 10, 1944, you and Mr. Rice went to the United States Employment Service at Reno, Nevada to apply for a job in Herlong?
A. Yes, sir.
Q. And did you both on that day file an application for a job?
A. No, sir.
Q. Did you file an application for a job?
A. No, sir.
Q. Did Mr. Rice file an application for a job?
A. No, sir.
Q. What did you do?
A. We went to the United States Employment Agency in Reno to see what there was for work in Herlong, and they asked us to go out to look it over.
Q. Both you and Mr. Rice?
A. That's right.
Q. Did you overhear the conversation that Mr. Rice had with the official in the United States Employment Service on July 10, 1944?
A. Yes, sir.

[Omission, see Transcript, pp. 368-369.]

Q. Didn't Mr. Rice speak to some official there about going to work in Herlong?

A. Yes.

[Omission, see Transcript, p. 369.]

Q. No, I want the question answered as to what did Mr. Rice say to that official about his wanting to work in Herlong on that day?

A. He wanted to go to Herlong to look the situation over [fol. 179] before he made any application.

Q. So that on that day he had made no application?

A. That is right, sir.

Q. And did Mr. Rice get—ask for further information about Herlong of this official?

A. They volunteered it.

Q. And he listened?

A. They were recruiting us.

Q. Don't you know, Mrs. Rice, that long before July 10, Mr. Rice had already applied for a position in Herlong?

A. He didn't apply for a job in Herlong——

Q. You don't know that he did?

Mr. Morgan: Let her answer.

A. He went to Mr. McLaughlin's about the residence if he went to Herlong before he was divorced.

Q. Were you there?

A. No, he told me that, sir.

Q. He told you that?

A. That is right.

[Omission, see Transcript, p. 370.]

Q. Did you get the impression from that conversation that day, on July 10, in the United States Employment Service, that Mr. Rice had not long before then applied to them for a job in Herlong?

A. Yes, sir.

Q. You got that impression?

A. Yes.

Q. I am going to read you from the deposition of Mr. McLaughlin certain questions and answers which I would like to have you listen to, and when you have listened to them, I want to ask you a question.

A. All right, sir.

Q. Mr. McLaughlin was being questioned:

"Q. Did you ever have any other conversation with Mr. Rice concerning his residence?

A. Yes."

Mr. Morgan: What page are you reading from?

Mr. Persky: Page 2, at the bottom.

"Q. When did that conversation take place?

A. That conversation took place shortly before June 13, 1944, a few days previous to the entry of the decree in this matter.

Q. Where did that conversation take place?

A. At 309 First National Bank Building, my office.

Q. Who was present?

A. I was.

Q. You mean you and Mr. Rice were present?

A. Yes.

Q. What was the nature of this particular conversation?"

Mr. Morgan: What page is that?

Mr. Persky: I am at the top of page 3. I had started at the bottom of page 2.

[fol. 180] "Q. What was the nature of this particular conversation?

A. Mr. Rice informed me that he had made application for employment at the United States Employment Office, and that they were recruiting help for the Army Ammunition Base at Herlong, California, a short distance over the Nevada line."

Q. Now that you have heard that, do you want to change your mind about that?

A. No, sir.

[Omission, see Transcript, pp. 372-373.]

Q. You and Mr. Rice opened a joint bank account at the First National Bank of Reno, Nevada, First and Virginia Branch on July 14, 1944?

A. That is right.

Q. And you have testified that prior to that time Mr. Rice never had a bank account in Reno, Nevada?

[Omission, see Transcript, p. 373.]

Q. And he also told you that the reason he hadn't before July 14, 1944 opened any bank account in Reno, Nevada was

because there was a lawsuit pending against him pressed by his first wife?

A. That is correct.

Q. Do you know when he came to Reno, Nevada?

A. When Mr. Rice?

Q. Yes.

A. Yes, I do.

Q. What dates?

A. March 22, 1944, 9 p. m.

Q. Did Mr. Rice tell you what that lawsuit was about?

A. It was about the property.

Q. Did he tell you?

A. Yes.

Q. What did he tell you it was about?

[Omission, see Transcript, p. 374.]

The Court: I will admit the question.

A. It was about the property in Woodbridge, Connecticut.

Q. Did he also—did he tell you about this lawsuit or did he show you the complaint?

A. He showed me the complaint.

Q. And on what date did he show you that complaint? You came there July 3rd, and you opened the bank account July 14?

A. Yes.

Q. What date did he show you the complaint?

A. Around the 30th, or the latter part of August, I think, sir.

Q. Why, Mrs. Rice, you opened your bank account on July 14.

A. That is right.

Q. And you had some conversation as to why he never had a bank account before?

A. Yes.

Q. And that conversation did not occur until six weeks [fol. 181] after you opened the bank account?

A. That is true, sir.

Q. Nothing was said about it at the time you opened that bank account?

A. No, sir.

Q. Nothing?

A. No, sir.

[Omission, see Transcript, p. 375.]

Q. Was it on August 30 he received that copy of the complaint?

[Omission, see Transcript, pp. 375-376.]

The Court: I will admit that question.

[Omission, see Transcript, p. 376.]

A. I received a letter with this little clipping, which was the first time we knew that this Woodbridge property was being brought in, through a friend of mine from West Haven, Connecticut. That is the first time we ever knew anything about this complaint.

Q. And that was while you were in Reno?

A. That was while I was in Reno.

Q. Do you remember when you received that clipping?

A. It was, I think, the latter part or the middle of August, somewhere there.

Q. So that it was you who told Mr. Rice about this case as a result of getting a clipping from your friend in West Haven?

A. That is right. I let him read the letter and see the clipping.

Q. Let's have it clear so that there won't be any misunderstanding about it. Sometime about the middle of or the latter part of August, you received a clipping from a friend of yours in West Haven, Connecticut, a clipping from a newspaper which gave some details concerning an action about the property in Woodbridge brought by Mrs. Rice against Herbert N. Rice?

A. Yes, sir.

Q. And you showed it to your husband?

A. Yes, sir.

Q. And that is the first he knew about it and the first you knew about it?

A. That is right, sir.

Q. And it was because of that information transmitted by your friend in West Haven to you and by you to Herbert Rice sometime in the middle or latter part of August——

A. Yes.

Q. That Mr. Rice did not open a bank account in Reno, Nevada, in March, April, May, and June and July up to the 14th of July, 1944?

[Omission, see Transcript, p. 378.]

[fol. 182] Q. Answer the question.

[Omission, see Transcript, pp. 378-382.]

Mr. Persky: I am through with my cross-examination. You take her on redirect.

Mr. Morgan: You are entirely through with your cross-examination? Okey.

Redirect examination.

By Mr. Morgan:

Q. Mrs. Rice, did you know that yours husband owned a piece of property in Woodbridge?

A. I did, sir.

Q. Did you know that his former wife, Lillian P. Rice was living on that property?

A. I did, sir.

Q. Did your husband tell you anything during the time that he was applying for his divorce about any negotiations between her counsel, Lillian P. Rice's counsel and his counsel concerning that property at Woodbridge?

A. Yes, sir.

[Omission, see Transcript, pp. 382-384.]

Mr. Morgan: We rest.

[The defendant rested.]

Mr. Persky: We rest too.

[Omission, see Transcript, p. 384.]

REPORTER'S CERTIFICATE—April 17, 1947

I hereby certify that the within and foregoing 384 pages contain an accurate and complete transcription of the testimony taken upon the trial of Case No. 67,725, *Lillian Rice v. Hermoine Rice*, before Hon. Francis A. Pallotti, a judge of the Superior Court, at New Haven, beginning Tuesday, November 19th, 1947.

H. E. Whay, Official Stenographer, Superior Court, New Haven County, at New Haven.

[fol. 183] Referee's certificate

The above is a transcript of the evidence submitted to me in the above matter.

John W. Banks, State Referee.

In Superior Court of New Haven County

Lillian Rice

vs.

Hermoine Rice et al.

Judge's certificate—October 9, 1947

The evidence in the above-entitled case including the exhibits, and as certified by the official stenographer and by Hon. John W. Banks, State Referee, is hereby certified and made part of the record on appeal.

Daley, Judge.

[New Haven County, Superior Court, filed Oct. 15, 1947, William A. Bree, Clerk.]

Supreme Court of Errors, New Haven County

Clerk's certificate

The above and foregoing is a true copy of the record in said case to be used in the Supreme Court of Errors.

William A. Bree, Clerk.

[fol. 184] RESCRIPT

STATE OF CONNECTICUT,
Supreme Court of Errors:

Hartford, March 10, 1948.

To the Clerk of the Supreme Court of Errors for New Haven County.

The Supreme Court of Errors has decided the following cases:

(2963)

LILLIAN P. RICE

v.

HERMOINE P. RICE et al.

There is no error. Opinion by Brown, J.
(Signed) Maltbie, Chief Justice.

Supreme Court of Errors, New Haven County. Filed Mar. 31, 1948. William A. Bree, Clerk.

DOCKET ENTRIES

Argued Feb. 3, 1948.
There is no error. March 31, 1948.

[fol. 185] NEW HAVEN COUNTY: FEBRUARY TERM, 1948

LILLIAN P. RICE

v.

HERMOINE P. RICE et al.

Action for a declaratory judgment that a decree of divorce granted in Nevada to the plaintiff's late husband was colorable and did not dissolve the marriage relation, brought to the Superior Court in New Haven County and referred to Hon. John W. Banks, state referee; judgment for the plaintiff upon the report, Daly, J., and appeal by the defendants. No error.

Daniel D. Morgan and Thomas F. Seymour, for the appellants (defendants).

Ralph H. Clark, with whom was Samuel A. Persky, for the appellee (plaintiff).

BROWN, J.:

In this action the plaintiff seeks a declaratory judgment that a decree of divorce granted in Nevada on June 13, 1944, to her husband, the late Herbert N. Rice, was colorable and did not dissolve their marriage. The defendants are the administrators of Rice's estate and Hermoine P. Rice, to whom Rice was married in Nevada on July 3, 1944, and to whom we shall hereinafter refer as the defendant. The Superior Court rendered judgment for the plaintiff and the defendants have appealed. The fundamental question presented for determination is whether Herbert N. Rice had acquired a bona fide domicil in the state of Nevada at the time the divorce decree was entered so that it was a valid decree, entitled to full faith and credit under article IV, § 1, of the constitution of the United States.

The case was fully tried before Pallotti, J., who died without rendering a decision. Pursuant to stipulation of the parties, the court ordered a transcript of the testimony and proceedings of the case as tried, together with the depositions, exhibits admitted in evidence and briefs filed by counsel, referred to a state referee, to be acted upon by him as though originally referred pursuant to §§ 167-178 of the Practice Book. The referee's report, as amended pursuant to a further stipulation, states that he considered all of the exhibits and evidence "subject to such rulings thereon concerning admissibility as were made by the late Judge Pallotti during the trial . . . and made no rulings thereon himself" and that these rulings "may be considered and have the same effect as though they had been made by said [fol. 186] State Referee." The court overruled the defendants' remonstrance, accepted the report as amended and rendered judgment for the plaintiff.

The material subordinate facts in the report as found by the referee may be thus summarized: the plaintiff and Herbert N. Rice, the intestate, were married July 7, 1921. They lived in this state, first in New Haven and Hamden, and then from 1928 to September, 1942, in Woodbridge. In June, 1942, Rice closed up the incorporated automobile

agency which, as principal stockholder, he had conducted in New Haven; most of the equipment was sold, some of it leased, and the rest stored in the Rice residence in Woodbridge. In September, 1942, he obtained a job in Springfield, Massachusetts, and lived there in a rented room until March, 1944. Rice told the plaintiff and others that this was a temporary job and that when the war was over he intended to return to Woodbridge and reopen his automobile business. The plaintiff remained in Woodbridge, and Rice retained his home there during this period.

About the time that Rice went to Springfield he and the defendant, who lived in New Haven, discussed the question of their marriage after he should have secured a divorce from the plaintiff. In February, 1944, he told the defendant that he was going to Reno to get a divorce and that if he got it he was going to ask her to marry him. He further stated that he had been advised that if he did not make his permanent home in Nevada the divorce would be questioned, that after their marriage they must make their permanent home in Nevada, and that he was never coming back to Connecticut. In March, 1944, Rice went to Reno, Nevada, for the sole purpose of obtaining a divorce from the plaintiff and arrived there on March 23. He started his divorce action May 5; service was made on the plaintiff by leaving a copy of the complaint in her hands in Woodbridge on May 12, 1944; no appearance was entered by her and the Nevada court entered a decree granting him a divorce from her on June 13, 1944. Rice telegraphed the defendant that the decree had been granted and on July 3 she arrived in Reno and they were married.

When Rice got to Reno he rented a room by the week in a rooming house and obtained a job at war work. Shortly before the divorce was granted he told the attorney representing him in the action that he had applied to the army employment agency for a job and asked whether it would be all right for him to take a job at Herlong, California. He [fol. 187] was told that it would. On the day before his marriage to the defendant he resigned his job in Reno, and upon their return from their wedding trip they went to Herlong, where he had obtained a war job and she a position as nurse at the army post. They lived in Herlong from July 15, 1944, until Rice died on December 23, 1944. In September, 1944, the defendant sent for her household furniture,

which she had left in storage in New Haven, and, when received, it was used to furnish the bungalow in which they lived in Herlong. Rice continued to pay rent for his room in Reno at a reduced price per week, although it was occupied part of the time by others. He kept a trunk, some clothing and personal effects in a closet there, and a short time after they went to Herlong the defendant brought a change of clothing which was left in the closet. They came to Reno occasionally for the weekend and then occupied the room. Rice continued to pay rent for the room in Reno because he did not know whether his job in Herlong would be permanent or whether he and the defendant would like it there, for if they did not they intended to return to Reno and make the room their home until they could find a place where they could get a home and start a guest house; and he asked his attorney to be on the lookout for a good location for him to live in Reno.

Rice told his Reno attorney that he did not intend to return to Connecticut but intended to remain in Reno "indefinitely." And he so testified in his divorce action. He told other persons that he intended to make it his permanent home. On July 14, 1944, Rice and the defendant opened a joint account in a bank in Reno. In October, 1944, they applied to be made voters in Nevada but were told that such applications could not be granted until they had resided in the state for one year. While the defendants do not claim by their remonstrance that any of these facts was improperly found, they do complain of the referee's failure to find certain further facts. This contention is unavailing, however, because each such fact is immaterial, is expressly or impliedly included in those which have been found, or is not admitted or undisputed within the meaning of § 353 (a) of the Practice Book. Morse v. Morse, 128 Conn. 138, 139, 20 A. 2d 730. In so deciding this claim of the defendants, we go beyond that to which they are entitled upon their brief. By his report, the referee properly found the ultimate fact as to Rice's residence in Reno, and also the subordinate facts. Practice Book, § 169; Fox v. South Norwalk, 85 Conn. 237, [fol. 188] 238, 82 A. 642. While the defendants, as was their right, sought by their remonstrance to have added, as undisputed, facts claimed to have been omitted, they did not pursue those grounds of remonstrance in their brief but appealed generally to the evidence to upset the ultimate fact. This they had no right to do.

The only further attack on the finding relates to this final paragraph of the referee's report: "Rice never established a home in Reno. He intended to do so in the future if he did not like it at Herlong but did not have an unqualified intention to make a home there at present, and Reno was not his bona fide domicil." The words quoted constitute a finding of ultimate fact, a conclusion drawn from the subordinate facts and inferences therefrom. In order to be sustained it must have been logically drawn from those facts, without violation of the plain rules of reason. Palumbo v. Fuller, 99 Conn. 353, 355, 122 A. 63; Conn. App. Proc. § 80. The question for solution is whether under the applicable principles of law the referee was warranted in making this finding and whether the court was justified in rendering its judgment thereon.

Domicil on the part of Rice was a necessary condition precedent to the jurisdiction of the Nevada court. Gildersleeve v. Gildersleeve, 88 Conn. 689, 692, 92 A. 684. This jurisdictional fact, which essentially involves the good faith of Rice in taking up his residence in Reno, is a proper subject of re-examination by the courts of this state. Gildersleeve v. Gildersleeve, supra, 693; State v. Cooke, 110 Conn. 348, 351, 148 A. 385; Hooker v. Hooker, 130 Conn. 41, 49, 32 A. 2d 68; Williams v. North Carolina, 325 U. S. 226, 234, 65 S. Ct. 1092, 89 L. Ed. 1577. The requisites of domicil are actual residence coupled with the animus manendi. Minor, Conflict of Laws, p. 199. To constitute domicil, the residence at the place chosen for the domicil must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicil of the person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with the present intention of making it his home, unless or until something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home." Mills v. Mills, 119 Conn. 612, 617, 179 A. 5. Since Rice's domicil was in Connecticut prior to his departure for Reno, our further statement in the above case concerning change of [fol. 189] domicil is also relevant here: "When the parties left this State with the intention of never returning, their domicil in Connecticut was not thereby changed. The former domicil persists until a new one is acquired. McDonald v. Hartford Trust Co., 104 Conn. 169, 177, 132 Atl. 902; Shaw v. Shaw, 98 Mass. 158, 160." Therefore "proof of the

acquisition of a new domicil of choice is not complete without evidence of an abandonment of the old." Morgan v. Morgan, 103 Conn. 189, 196, 130 A. 254. As we stated in the McDonald case, supra, one's intention in departing from his domicil not to return to it constitutes no abandonment at that time; "the law does not permit one to abandon, nor recognize an abandonment of, a domicil until another has been established"; and, to have acquired a new domicil, "two things were necessary, he must have established a residence there, and while so residing he must have had the intention of making it his home." See Restatement, Conflict of Laws, § 18. In the words of the New Jersey court, residence with the "animus non revertendi," but without the "animus manendi," cannot suffice to effect a change of domicil. Sprague v. Sprague, 131 N. J. Eq. 104, 107, 23 A. 2d 810. As we pointed out in Mills v. Mills, supra, at page 618, that this intention must be unqualified and not conditional upon the happening of a future event "is well settled," citing Ross v. Ross, 103 Mass. 575, 576; Denver v. Sherret, 88 F. 226, 227; and we there further said that the intention "must be an intention to make a home at the moment, not to make a home in the future," referring to the Restatement of the Conflict of Laws, § 20. Also, this intention must be "to make a home in fact, and not an intention to acquire a domicil." Restatement, op. cit., § 19.

The burden was upon the plaintiff to prove that Rice did not have a domicil in Reno and that therefore the Nevada court had no jurisdiction. Williams v. North Carolina, 325 U. S. 226, 234, 65 S. Ct. 1092, 89 L. Ed. 1577. Since before going there he was domiciled in Connecticut, the law as to change of domicil above recited makes clear that the defendants' attack upon the quoted finding of the referee cannot succeed unless the subordinate facts are sufficient to establish as a matter of law that Rice had acquired a new domicil in Nevada. Whether the referee was warranted in concluding that during Rice's stay in Reno he did not have the requisite bona fide intention to make it his home and therefore acquired no domicil in Nevada depends upon whether this is a reasonable inference from the subordinate facts found. See Williams v. North Carolina, supra, 236; Esenwein v. Pennsylvania, 325 U. S. 279, 281, 65 S. Ct. [fol. 190] 1118, 89 L. Ed. 1610; Donovan v. Connecticut Co., 86 Conn. 82, 87, 84 A. 288. No detailed discussion is required to demonstrate that these facts, in connection with

the proper inferences therefrom, afford a sufficient basis for this conclusion. Very briefly, they indicate that Rice, after closing up his automobile business, in which he had long been engaged in New Haven, with the intention of resuming when business conditions warranted, decided, in consequence of his infatuation with the defendant, to attempt a Nevada divorce that he might marry her; in March, 1944, he went to Reno for the sole purpose of getting a divorce from the plaintiff and obtained a decree as soon after his arrival as the Nevada law allowed; in response to his telegram the defendant came to Reno and they were married; during the period necessary to satisfy the residence requirement of the Nevada statute, Rice lived in a rented room and worked at a war job in Reno, but even before the decree was granted he applied for a job at Herlong, California; after their marriage he and the defendant went to Herlong, where they both obtained employment and lived in a rented bungalow equipped with furniture of the defendant from July 15 until December 23, 1944, when Rice died; during this period Rice had not decided whether to make his home in Herlong or to return to Reno.

Other facts found, it is true, taken at face value and by themselves, suggest a conclusion contrary to that reached by the referee. Principal among them are Rice's statements indicative of an intention to make Nevada his permanent home and never to return to Connecticut and his continued renting and limited use of the room in Reno after moving to Herlong. As to the former, it is to be noted that the finding is not what Rice's intention was but what he said it was. Such statements, under the circumstances, might have been regarded by the referee as of questionable evidential value. "Where, as here, it become highly advantageous to the claimant temporarily to feign an intention to become a resident for only a brief time, in order to accomplish other ends, his claim of intention will be scrutinized and weighed like any other evidence in the light of his conduct and all the circumstances surrounding it." Messenger v. Messenger, 188 Iowa 367, 373, 176 N. W. 260. "It is not persuasive corroboration to make a self-serving declaration to another only to have that other repeat it at a time when it might be helpful." Cox v. Cox, 137 N. J. Eq. 241, 245, 44 A. 2d 92. What his intention was in fact, was for the [fol. 191] referee's determination upon all of the facts found. The application of this principle is particularly im-

portant here, where Rice's sole purpose in going to Reno was to obtain a divorce. While such a motive is not conclusive, it is a pertinent fact bearing upon the good faith of his residence in Nevada. Gildersleeve v. Gildersleeve, 88 Conn. 689, 694, 92 A. 684; State v. Cooke, 110 Conn. 348, 351, 148 A. 385; 2 Nelson, Divorce & Annulment (2d Ed.) § 21.17. In so far as the continued renting and limited use of the room in Reno is concerned, any significance which this conduct might otherwise have is negatived by the referee's express finding that the reason for Rice's retention of it was because he did not know whether his job in Herlong would prove permanent or whether he and the defendant would like it there, and that if they did not they intended to return to Reno.

The defendants claim that evidence of Rice's relations with the plaintiff down to the time of his departure for Reno was improperly admitted. By their answer they denied that during his employment in Springfield he continued to maintain his domicil in Connecticut, as alleged in the complaint. Evidence that there were no acts, conduct or statements during that period which indicated an intent to abandon that domicil was properly admitted. The record does not bear out the defendants' claim in their brief that the evidence was admitted for the purpose of showing that Rice's matrimonial domicil was in Connecticut, under the rule in Haddock v. Haddock, 201 U. S. 562, 26 S. Ct. 526, 50 L. Ed. 867, a case partly overruled in Williams v. North Carolina, 317 U. S. 287, 63 S. Ct. 207, 87 L. Ed. 279; nor was any such question of matrimonial domicil as was considered in the Williams case involved in the situation before us. Finally, the defendants' claim that the referee's report indicates that he erroneously interpreted Rice's testimony in the divorce action that he intended to remain in Reno "indefinitely" as meaning less than "permanently" is without merit. In the light of the referee's evident disbelief of the truth of Rice's statements, made to others, of his intent to reside "permanently" in Reno, as shown by the referee's finding, it cannot reasonably be maintained that, though the referee did construe the word as suggested, the defendants could have been prejudiced thereby.

There is no error.

In this opinion the other judges concurred.

217

[fol. 192] At a Supreme Court of Errors held at Hartford, on the First Tuesday of February, A. D. 1948.

Present: Hon. William M. Maltbie, Chief Justice; Hon. Allyn L. Brown, Hon. Newell Jennings, Hon. Arthur F. Ells, Hon. Edwin C. Dickenson, Associate Judges.

LILLIAN P. RICE of Woodbridge, Connecticut,

vs.

HERMOINE P. RICE of Herlong, California; and Walter K. King of West Haven, Connecticut, Administrator of the Estate of Herbert N. Rice, Deceased

On Appeal from the Superior Court for New Haven County at New Haven

JUDGMENT

This appeal by the defendants claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the Superior Court for New Haven County at New Haven, on the 9th day of September, A. D. 1947, and came to this Court, at its term held at Hartford, on the first Tuesday in November, A. D. 1947, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court for New Haven County at New Haven, there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellants her costs taxed at $——.

Date of judgment, March 31st, 1948.

By the Court, William A. Bree, Clerk.

[Endorsed:] The Supreme Court of Errors, Third Judicial District. Lillian P. Rice vs. Hermoine P. Rice et al. Judgment File. Date of Judgment, March 31st, 1948.

[fol. 193] STATE OF CONNECTICUT,
New Haven County,
Supreme Court of Errors:

I, William A. Bree, Clerk of the Supreme Court of Errors for New Haven County, in the State of Connecticut and keeper of the records and seal thereof, hereby certify that the within, above and foregoing is a true copy of the printed record used in the hearing before the Supreme Court of Errors of the State of Connecticut in the case of Lillian P. Rice, of Woodbridge, Connecticut vs. Hermoine P. Rice, of Herlong, California, and Walter K. King, of West Haven, Connecticut, Administrator of the Estate of Herbert N. Rice, deceased, including the rescript from the Supreme Court of Errors; the docket entries therein; the opinion of the Supreme Court of Errors; the judgment therein; and I further certify that no further proceedings of any kind other than as noted herein have been filed in said Supreme Court of Errors in the above entitled action.

In witness whereof I hereunto set my hand and affix the seal of said Court at New Haven, in said County, this 8th day of June, A. D., 1948.

William A. Bree, Clerk. (Seal.)

[fol. 194] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1948.

The petition herein for a writ of certiorari to the Supreme Court of Errors of the State of Connecticut is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 53,119, Connecticut, Supreme Court of Errors; Term No. 117; Hermoine P. Rice, Petitioner, vs. Lillian P. Rice. Petition for writ of certiorari and exhibit thereto. Filed June 24, 1948. Term No. 117 O.T. 1948.

LIBRARY
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

NO. _____

HERMOINE P. RICE,
Petitioner

v.

LILLIAN P. RICE,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT THEREOF.

DANIEL D. MORGAN,
Counsel for Petitioner.

INDEX

Subject Index

	PAGE
Petition for Writ of Certiorari	1
Summary Statement of the Matter Involved	1
Jurisdictional Statement	3
Questions Presented	4
Reasons Relied Upon for Allowance of Writ	4
Brief in Support of Petition for Certiorari	7
The Opinion of the Court Below	7
Jurisdiction	7
Statement of the Case	8
Errors Relied Upon	9
Argument	10
Summary	10
I. The finding that the decedent had no bona fide domicil in Reno was not amply supported in evidence	10
II. The Supreme Court of Errors of the State of Connecticut considered the case as if the burden were on the petitioner to establish the validity of the Nevada decree	15
Conclusion	18

Table of Cases Cited

Baldwin v. *Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670 ..... 12, 14

Baldwin v. *Baldwin*, 163 P. 2nd 54, 56 (Dist. Ct. of App., 2nd Dist., Div. 2, Cal.) 14

Commonwealth v. *Berfield*, 160 Pa. Super. 438, 51 A. 2nd 523 ..... 10, 11

Cox v. *Cox*, 137 N. J. Eq. 241, 44 A 2nd 92 10

Dalton v. *Dalton*, 270 App. Div. 269, 59 N. Y. Supp. 2nd 68 12, 14

Esenwein v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118 .. 5, 11

Gildersleeve v. *Gildersleeve*, 88 Conn. 689, 694, 92 A. 684 .. 17

Haddock v. *Haddock*, 201 U. S. 562, 26 S. Ct. 525 17

Hall v. *Hall*, 199 Miss. 478, 24 So. 2nd 347 10

Hollander v. *Hollander*, 137 N. J. Eq. 70, 42 A. 2nd 648 .. 10

Kurski v. *Kurski*, 185 Misc. 97, 55 N. Y. Supp. 2nd 748 .. 11

PAGE

Lamb v. *Lamb*, 57 Nev. 421, 65 P. 2nd 872 15
McDonald v. *Hartford Trust Co.*, 104 Conn. 169, 177, 132 A. 902 ..... 16, 17
Milliken v. *Meyer*, 311 U. S. 457, 461, 61 S. Ct. 339, 342, n. 8 4
Mills v. *Mills*, 119 Conn. 612, 617, 179 A. 5 ..... 16, 17
Morgan v. *Morgan*, 103 Conn. 189, 196, 130 A. 254 ..... 16, 17
Reed v. *State*, 148 Tex. Crim. 489, 187 S. W. 2nd 660 11
Walkinshaw v. *O'Brien*, 130 Conn. 151, 153, 32 A. 2nd 639 14
White v. *White*, 80 U. S. App. D. C. 156, 150 F. 2nd 157 .. 10, 11
Williams v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207 .. 10, 17.
Williams v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 109 2 3, 4, 5, 10, 15, 17
Williams v. *Oscntum*, 232 U. S. 619, 624, 34 S. Ct. 442 .. 14, 17

TABLE OF STATUTES AND OTHER AUTHORITIES CITED

Constitution of the United States, Art. IV, §1 ..... 4, 7
Judicial Code §237 (b), 28 U. S. C. A. §344 (b) 2, 7
Rev. Stat. §905, 28 U. S. C. A. §687 3

Supreme Court of the United States

OCTOBER TERM, 1947

NO.

HERMOINE P. RICE,
Petitioner

v.

LILLIAN P. RICE,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

MAY IT PLEASE THE COURT:

Your petitioner respectfully shows:

Summary Statement of the Matter Involved

The respondent and Herbert N. Rice, the decedent, were married in 1921 and lived together in and around New Haven, Connecticut, until September, 1942, when the decedent discontinued his automobile business and obtained wartime employment in Springfield, Massachusetts. After consulting a Springfield

attorney concerning a divorce, the decedent left for Reno, Nevada with the declared intention of remaining there permanently, arriving there on March 23, 1944. On May 5, 1944, the decedent instituted suit for divorce in The Second Judicial District Court of the State of Nevada, in and for the County of Washoe, personal service thereof being made on the respondent in Woodbridge, Connecticut, on May 12, 1944. On June 13, 1944, said Court entered a decree of divorce dissolving the marriage between the decedent and the respondent, the jurisdictional basis for such decree being founded on the fact that the decedent testified that from the time he arrived in Nevada he intended to remain there for an indefinite time. The petitioner arrived in Reno, Nevada, on July 3, 1944, and she and the decedent were married on that day.

On July 15, 1944, the petitioner and the decedent went to Herlong, California, where both had obtained wartime employment at the Sierra Ordnance Depot. They were so employed and were living in government quarters provided them there on December 23, 1944, the date of the decedent's death.

To determine the widowhood status of the parties and questions concerning the inheritance of the property of the decedent, who died intestate, the respondent brought an action in the Superior Court of Connecticut for New Haven County seeking a judgment declaring herself to be the widow of the decedent and declaring the Nevada divorce to be a colorable one. From a judgment in favor of the respondent the petitioner appealed to the Supreme Court of Errors of the State of Connecticut, which held that there was no error (R. p. 184).

Statement as to Jurisdiction

This Court has jurisdiction to review the decision of the Supreme Court of Errors of the State of Connecticut under and by virtue of §237 (b) of the Judicial Code (28 U. S. C. A. §344 (b)) in that a right under the Constitution of the United States was specially claimed by the petitioner.

The respondent alleged in paragraph 9 of the complaint that the decedent's residence in Nevada was colorable only (R. p. 3), which allegation was denied by the petitioner (R. p. 4). The respondent claimed a judgment declaring the Nevada divorce to be a colorable one and one which did not dissolve the marriage between the decedent and the respondent (R. pp. 3-4). The trial record was referred to a State Referee (R. p. 6), due to the death of the trial judge (R. p. 5), and paragraph 10 of the report of the Referee states that the Referee found that Reno was not the bona fide domicil of the decedent (R. p. 9). The petitioner remonstrated to this paragraph on the ground that such fact was found without evidence (R. p. 15). The judgment on the report declared the divorce to be a colorable one (R. p. 43).

Under the decision of this Court in *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, the above proceedings, being confined to the jurisdictional basis of the Nevada court for granting the divorce decree, indicate that the full faith and credit to be accorded the Nevada decree, under Article IV, §1, of the Constitution of the United States, was the principal issue in the case. This issue was the one raised on appeal to the Supreme Court of Errors of the State of Connecticut in the petitioner's brief in that Court, and this was the principal issue considered in the opinion of that Court (R. p. 185); hence the materiality of the decision of that Court on this Federal question is clear.

That the decision substantially affects the parties is demonstrated by the fact that, in addition to a determination of the widowhood status of each, the right of each to inherit the property of the decedent is involved.

Although the decree of the Nevada Court was not proved in accordance with the provisions of Rev. Stat. §905, 28 U. S. C. A. §687, the decree was alleged by the respondent and admitted by the petitioner (R. pp. 3-4), a transcript of the proceedings had in the Nevada court was admitted in evidence (R. pp. 47-51) and the Supreme Court of Errors considered the decree in the light of

Article IV, §1, of the Constitution of the United States (R. p. 185) as if it had been properly pleaded; hence, jurisdiction of this Court should not be denied on that ground. *Milliken v. Meyer*, 311 U. S. 457, 461, 61 S. Ct. 339, 342, n. 8.

The Supreme Court of Errors of the State of Connecticut is the highest court of that State and there are no further proceedings available to the petitioner in that State. The judgment of that Court was rendered on March 31, 1948 (R. p. 192).

Questions Presented

In determining whether or not the Connecticut Supreme Court, in affirming the judgment of the trial court, accorded full faith and credit to the Nevada decree this Court must consider certain subsidiary questions:

1. Was the duty of respect owed the Nevada decree fairly discharged by the Connecticut courts?

2. Was such duty evaded by a finding of an absence of domicil in Nevada on the part of the decedent?

3. Is there evidence in the record, or inferences which may reasonably be drawn therefrom, to indicate that the respondent had sustained the burden of undermining the verity of the Nevada decree?

4. Does the record indicate that proper weight was given to the presumption of validity of the Nevada decree and to the finding of domicil implicit therein?

5. Was the finding of domicil adverse to the implied finding thereof in the Nevada decree amply supported by evidence?

Reasons Relied on for Allowance of Writ

In *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, this Court enunciated certain standards by which the adequacy of an attack upon the divorce decree of a sister-State is to be meas-

ured. The respect owed such a decree should not be "evaded under the guise of finding an absence of domicil . . . ." "The burden of undermining the verity which the Nevada decrees import rests heavily upon the assailant." (325 U. S. at 233, 65 S. Ct. at 1097.)

Further, the Nevada decree must not be upset unless the issue of domicil "was left for fair determination by appropriate procedure," and ". . . ." a finding adverse to the necessary foundation for any valid sister-State judgment was *amply supported in evidence*" (325 U. S. at 234, 65 S. Ct. at 1097) (Italics added), and the finding of domicil in the Nevada decree can be overturned only by "relevant standards of proof" (325 U. S. at 236, 65 S. Ct. at 1098).

The petitioner contends that the opinion of the Connecticut Supreme Court (R. pp. 184-191) reveals that the above standards were not properly applied, and that, although the result is in accordance with *Williams* v. *North Carolina*, *supra*, and *Eschwein* v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, those cases should not preclude this Court from granting a review of this case on writ of certiorari. It is claimed that the Supreme Court of Errors of the State of Connecticut has decided a Federal question of substance by improperly applying standards laid down by this Court and has decided it in a way probably not in accord with the decisions of this Court in which those standards are enunciated, nor is the decision in accord with the decisions of the courts of other States that have had occasion to apply those standards.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of Errors of the State of Connecticut, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in the case numbered and entitled on its docket. No. 2693, *Lillian P. Rice* v. *Hermoine P. Rice et al.*, to the end that this cause may be reviewed and determined by this Court as provided for by the

statutes of the United States; and that the judgment herein of said court be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

HERMOINE P. RICE,
Petitioner.

Dated: June 22, 1948.

By DANIEL D. MORGAN,
Counsel for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1947

NO.

HERMOINE P. RICE,
Petitioner

v.

LILLIAN P. RICE,
Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion of the Court Below

The opinion of the Supreme Court of Errors of the State of Connecticut in this case is reported in 134 Conn. 440 and is set out in the record (R. pp. 184-191).

Jurisdiction

The jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code (28 U. S. C. A. §344 (b)). The Supreme Court of Errors of the State of Connecticut has rendered a final judgment, by deciding there to be no error, on appeal of a case wherein the petitioner specially claimed a right under Article IV, §1, of the Constitution of the United States, which claim was denied by the Connecticut Supreme Court.

Statement of the Case

(In the following recital of the facts no reference to the record is made as to facts included in the Report of the State Referee (R. pp. 6-9). Reference to the Record is made as to all facts not included in said report.)

The petitioner and the decedent, Herbert N. Rice were married in 1921, and from then until September, 1942, lived in and around New Haven, Connecticut. The decedent was engaged in the automobile business in New Haven until June, 1942, when the business was discontinued and most of the equipment sold or leased. In September, 1942, he obtained wartime employment in Springfield, Massachusetts, and lived in that city in a rented room until March, 1944. In February, 1944, the decedent told the petitioner that he had consulted an attorney in Springfield with reference to a divorce, and that the attorney had told him that it would be necessary for him to make his permanent home in Nevada in order to obtain a valid divorce there. He also told the petitioner that he intended to remain in Nevada permanently whether or not he secured a divorce there, but that if he were successful in securing a divorce he would ask the petitioner to marry him (R. pp. 154-155).

In March, 1944, the decedent left for Nevada, arriving in Reno on March 23, 1944. He commenced a divorce action on May 5, 1944, in the Second Judicial District Court of the State of Nevada in and for the County of Washoe, personal service of said action being made on the respondent in Woodbridge, Connecticut, on May 12, 1944. On June 13, 1944, a decree was entered in that Court granting him a divorce from the respondent. He notified the petitioner of the decree, and she came to Reno, arriving there on July 3, 1944. On that same day the decedent and the petitioner were married.

Before the decree was granted, the decedent consulted his Nevada attorney with reference to the effect of his taking a wartime job in Herlong, California, upon his Nevada residence, as

he wanted to maintain such residence. The Nevada attorney explained to the decedent that it would be "all right" for him to take such a job (R. pp. 53-54).

On July 15, 1944, the decedent and the petitioner went to Herlong, California, where they both had obtained wartime employment at the Sierra Ordnance Depot, of which the town of Herlong entirely consisted (R. p. 159), although the decedent continued to pay rent on the room he had rented when he had first come to Reno. The two had opened a joint bank account in Reno on July 14, 1944.

After they went to Herlong, the decedent and the petitioner continued to occupy the room in Reno on weekends. In September, 1944, the petitioner sent for furniture that she had stored in New Haven, Connecticut, and used it to furnish the quarters that were provided for them at the Sierra Ordnance Depot (R. p. 161). In October, 1944, they attempted to register as voters in Nevada, but could not do so because they had not resided in the State for one year.

The decedent and the petitioner were working at the Sierra Ordnance Depot and living in their quarters there at the time of the decedent's death, December 23, 1944.

Errors Relied Upon

The Supreme Court of Errors of the State of Connecticut erred in allowing remote and irrelevant evidence to overturn the Nevada decree. The court erred in requiring that proof of abandonment of a former domicil be a necessary element in the proof of a change of domicil. The court erred in holding that the judgment of the Superior Court could not be reversed unless the facts showed *as a matter of law* that the decedent was domiciled in Reno, thereby reviewing the case as if the burden of establishing the validity of the Nevada decree were on the petitioner. The court further erred in allowing the statement that the decedent went to Reno for the sole purpose of obtaining a divorce to stand as an unreviewable finding of fact.

ARGUMENT

Summary

In the following argument it is contended that an analysis of the proceedings had in the trial of the action indicates that what evidence there was in support of the ultimate finding of fact and the judgment was remote and irrelevant, and that the Court gave undue weight to such evidence; it is also contended that the opinion of the Court reveals that the presumption of validity of the Nevada decree was improperly countered by another presumption, the effect of which was to cast the burden of proof upon the petitioner.

I. The finding that the decedent had no bona fide domicil in Reno was not amply supported in evidence.

In the following cases involving *ex parte* divorces rendered against non-appearing spouses, the courts of some States have had occasion to apply the principles set out by this Court, as in *Williams* v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207, and *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092. In *Hall* v. *Hall*, 199 Miss. 478, 24 So. 2nd 347, the husband, a doctor, went from Mississippi to Nevada, obtained a divorce there and returned to Mississippi immediately, resuming his medical practice upon his return. The Court held the Nevada divorce to be invalid. In *Hollander* v. *Hollander*, 137 N. J. Eq. 70, 42 A. 2nd 648, where the husband left New Jersey, obtained a divorce in Arkansas, and returned to New Jersey to live, the court held the divorce to be invalid, as it did in *Cox* v. *Cox*, 137 N. J. Eq. 241, 44 A. 2nd 92, in which latter case the husband utilized an extension on his regular vacation from his position as a school principal to satisfy the Nevada residence requirement and resumed his position as principal upon his return from obtaining a Nevada divorce.

Florida divorces were held to be invalid in *White* v. *White*, 80 U. S. App. D. C. 156, 150 F. 2nd 157, *Commonwealth* v. *Berfield*,

160 Pa. Super. 438, 51 A. 2nd 523, and *Kurski* v. *Kurski*, 185 Misc. 97, 55 N. Y. Supp. 2nd 748. In all three cases the husband had gone to Florida, obtained a divorce and returned to the state of his former domicil. In the *White* case, *supra*, the court held the divorce to be invalid as the facts indicated that ". . . said defendant went to the state of Florida solely for the purpose of obtaining a divorce, and with no bona fide intention of remaining in said state permanently or indefinitely." (150 F. 2nd at 157). In the *Berfield* case, *supra*, the court held that the husband had not established a domicil in Florida, where he stayed there only the necessary three months before filing his divorce action and remained there for a few months after the decree because of profitable war work and not because of domiciliary intent. In the *Kurski* case, *supra*, the husband returned to his former state six days after the entry of the divorce decree and resumed his former job without having resigned his membership in a New York labor union.

In *Reed* v. *State*, 148 Tex. Crim. 489, 187 S. W. 2nd 660, the verdict of guilty in a trial for bigamy was upheld where it appeared that the accused had been domiciled in Texas both before and after obtaining an Oklahoma divorce.

A common characteristic of all the above cases is the fact that the party who obtained the sister-State divorce returned soon thereafter to the state of his former domicil. That does not mean that the application of the decision of this Court in the *Williams* cases, *supra*, should be confined to that situation. However, it does indicate what the courts of the States involved consider to be evidence sufficient to upset the validity of the decree of the sister-State.

Considering the factual situation of the above cases, and the factual situation in *Esenwein* v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, it is possible to predict that a divorce would be held invalid if the facts of the specific case coincide reasonably well with the following facts:

A, being domiciled in State X, goes to State Y and obtains a divorce. A then goes to another state, generally X, to live and make his home.

However, if A, instead of moving to another state after the divorce, remained in State Y, the result would generally be to hold the divorce valid. In *Dalton* v. *Dalton*, 270 App. Div. 269, 59 N. Y. Supp. 2nd 68, the couple lived in New York for 13 years. They were separated in 1938, and the husband went to Illinois. After living in Illinois for four years he went to Washington, D. C., as a government employee. He obtained a default divorce in Illinois which was held to be valid in New York, the Court deciding that the above facts supported the jurisdiction of the Illinois court, and that the government work in Washington did not operate to change the husband's domicil.

The particular point during the stay in State Y at which the divorce is commenced does not seem to be crucial. In *Baldwin* v. *Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670, the husband left California and arrived in Reno in July, 1939. A divorce was granted on December 16, 1939. During this period and after the divorce the husband stayed at a hotel and later in two different apartments. At the time of the suit in question he was living in a Reno hotel. The Court held the above facts amounted to sufficient evidence to support the jurisdiction of the Nevada court.

The crucial facts in all the above cases are those which pertain to the actions of the person after he moves to State Y. If he removes to some other state to make his home soon after residing in State Y for the period of time required by the residence requirement, the divorce is invalid. If there is no evidence tending to show his making a home in a state other than State Y, the divorce is valid. Assume that two husbands, the well established domicil of each being Connecticut, went to Reno. Husband A went there solely to get a divorce and to return to Connecticut. Husband B went to remain there and make his home and to get a divorce. Each obtained divorces. Clearly A's divorce is invalid and B's

divorce is valid. However, the facts in each case up to the time of the departure from Connecticut are likely to be essentially similar. Whether or not either or both had grounds for divorce good in Connecticut is immaterial. Whether or not their prior marriages were happy ones is immaterial. Only by considering the acts and statements of each after arriving in Nevada is it possible to determine the validity of the respective divorces.

No over-simplification of the above cases is intended, but merely that the decisive facts of such cases are those pertaining to the time after the divorce, which may or may not be entirely consistent with the facts pertaining to an earlier period. This is certainly the logical approach. The spurious nature of a pre-divorce residence will be revealed, as well as the bona fide nature of a valid residence proven by the subsequent actions of the person who removed to another state and obtained a divorce.

The above method of approach reveals that the Connecticut courts had insufficient cogent evidence upon which to find that the decedent had no bona fide domicil in Reno, and that what evidence there was pertaining to the decedent's actions subsequent to his arrival in Nevada was incorrectly interpreted by those courts.

The sole fact subsequent to the decedent's arrival in Nevada that bears on the finding reached by the State Referee is that the decedent obtained war work in Herlong, California, and used the room in Reno only on week-ends. The Referee's report stated that the decedent "intended to [establish a home in Reno] in the future if he did not like it at Herlong . . . ." (R. p. 9). This apparently disregards the fact that Herlong, California, consisted solely of an Army post (R. p. 159) and that the decedent had stated to his Nevada attorney that he did not intend to lose his Nevada residence by taking the war employment at Herlong, and had been advised by said attorney that his taking such employment would be "all right." (R. pp. 53-54). Taking such a job under the above conditions should not permit an inference that his domicil

was changed to Herlong, nor should it constitute evidence that his domicil was otherwise than Nevada. See *Dalton* v. *Dalton*, 270 App. Div. 269, 272, 59 N. Y. Supp. 2nd 68, 71, and cases cited therein.

The sole remaining evidence pertaining to the period subsequent to the decedent's arrival in Reno consists of his statements, which the State Referee apparently disbelieved. (See Report of State Referee, Par. 9, R. p. 9, also R. p. 191). However, it is a well known rule that a fact may not be found solely on disbelief of statements as to the opposite of such fact. *Walkinshaw* v. *O'Brien*, 130 Conn. 151, 153, 32 A. 2nd 639. In an earlier opinion of *Baldwin* v. *Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670, the court said:

> "Nor will a suspicion of fraud in the prosecution of a divorce action by such party in the foreign jurisdiction avail to defeat the foreign decree . . ." *Baldwin* v. *Baldwin*, 163 P. 2nd 54, 56. (Dist. Ct. of App., 2nd Dist. Div. 2, Cal.)

The opinion of the Connecticut Supreme Court also emphasized the apparent disbelief of the decedent's statements as rendering immaterial any misconstruction of the word "indefinitely" by the State Referee (R. p. 191). Certainly that misconstruction under such circumstances would be material. If the State Referee believed that the decedent, from the time he arrived in Reno, intended to remain there indefinitely he should have found that the decedent had a domicil in Nevada. This Court has stated that:

> "The essential fact that raises a change of abode to a change of domicil is the absence of any intention to live elsewhere. Story on *Conflict of Laws*, Sec. 43,—or as Mr. Dicey puts it in his admirable book 'The absence of any present intention of not residing permanently or indefinitely in the new abode.'" *Williams* v. *Oscntum*, 232 U. S. 619, 624, 34 S. Ct. 442.

The extract of the charge to the jury in *Williams v. North Carolina*, 325 U. S. 226, 236, 65 S. Ct. 1092, 1098, which charge was held to be proper, states that domicil is an abode which one takes with a "present intention of making it his home, either permanently or for an indefinite or unlimited length of time." Nevada law requires that the residence in that State must be accompanied by a bona fide intention to make a home in Nevada and to remain there indefinitely. *Lamb v. Lamb*, 57 Nev. 421, 65 P. 2nd 872.

II. The Supreme Court of Errors of the State of Connecticut considered the case as if the burden were on the petitioner to establish the validity of the Nevada decree.

The Court declared (R. p. 189):

> "The burden was on the plaintiff to prove that Rice did not have a domicil in Reno, and that therefore the Nevada court had no jurisdiction. *Williams v. North Carolina*, 325 U. S. 226, 234, 65 S. Ct. 1092, 89 L. Ed. 1577. Since before going there he was domiciled in Connecticut, the law as to change of domicil above recited makes clear that the defendants' attack upon the quoted finding of the referee cannot succeed unless the subordinate facts are sufficient to establish as a matter of law that Rice had acquired a new domicil in Nevada."

The first sentence of the above quotation, of course, correctly declares the rule of this Court. However, the second sentence seems to state just the reverse. In order to determine the implication of that statement it is necessary to review the "above recited" law as to change of domicil. The opinion, (R. pp. 188, 189) contains the following quotations:

> "'To constitute domicil the residence at the place chosen for the domicil must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicil of the person in which he has voluntarily fixed his habitation, not for a mere temporary or

special purpose, but with the present intention of making it his home, unless something shall happen to induce him to adopt some other permanent home.' *Mills* v. *Mills*, 119 Conn. 612, 617, 179 A. 5."

"'When the parties left this State with the intention of never returning, their domicil in Connecticut was not thereby changed.' The former domicil persists until a new one is acquired. *McDonald* v. *Hartford Trust Co.*, 104 Conn. 169, 177, 132 Atl. 902 . . .' *Mills* v. *Mills*, *supra*. Therefore 'proof of the acquisition of a new domicil of choice is not complete without evidence of the abandonment of the old.' *Morgan* v. *Morgan*, 103 Conn. 189, 196, 130 A. 254. As we stated in the *McDonald* case, supra, one's intention in departing from his domicil, not to return to it constitutes no abandonment at that time; 'the law does not permit one to abandon, nor recognize an abandonment of a domicil until another has been established . . .'"

The apparent interpretation of these quotations is that the rebuttable presumption of validity of a sister-State decree is counteracted by a presumption that the domicil of a former domiciliary of Connecticut cannot be said to have changed unless the facts show *as a matter of law*, that the domicil has been changed to another state. Whatever the presumption may be with regard to retention of a former domicil, it should not have the effect of destroying the presumption of validity of a sister-State judgment or decree.

The accuracy of the first quotation from *Mills* v. *Mills*, *supra*, as a restatement of the law of change of domicil is not contested here, provided the word "permanently" is interpreted as claimed in Part I of this brief. However, the second quotation from that case, in the light of the facts therein, merely means that leaving a home state does not, of itself, operate to extinguish that domicil. Such a rule is necessary in view of the concept that a person has, at all times, only one domicil, so that, during the transition period from one abode to another, the law regards the person as retaining

his former domicil. Furthermore, *Mills* v. *Mills*, *supra*, was expressly decided under the doctrine of *Haddock* v. *Haddock*, 201 U. S. 562, 26 S. Ct. 525, and Connecticut was held to be the matrimonial domicil of the husband, because he had deserted his Connecticut wife. The retention of matrimonial domicil has no significance now. *Williams* v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207.

The quotation from *Morgan* v. *Morgan*, *supra*, is interpreted to mean that, if it were established that the decedent (a) changed his residence and (b) intended to make the new residence his home, the further proof of (c) abandonment of his Connecticut domicil would be required. The Connecticut Court had held, prior to *Morgan* v. *Morgan*, *supra*, that the sole conditions for a change of domicil were an actual change of residence and the absence of an intention to remove elsewhere. *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 694, 92 A. 684. In the second sentence following the above quotation from the *McDonald* case, *supra*, there appears this statement:

> "Before McDonald could acquire a domicil in Louisville two things were necessary, he must have established a residence there, and while so residing he must have had the intention of making it his home." *McDonald* v. *Hartford Trust Co.*, 104 Conn. 169, 177, 132 A. 902.

It is conceded that no appeal to this Court can be made on the ground that the Connecticut court improperly applied local law. But it is submitted that the Connecticut Supreme Court not only misapplied Connecticut law in deciding that the apparent lack of proof of abandonment required that the facts *as a matter of law* show that the domicil of the decedent was Nevada, thereby, for practical purposes, destroying the presumption of validity of a sister-State decree, but also misapplied Federal law. The second *Williams* case, *supra*, necessarily makes the question of change of domicil a Federal one, and *Williams* v. *Oscutum*, *supra*, states the requirements for change of domicil as interpreted by this Court; such requirements do not include proof of abandonment of a

former domicil. The question of abandonment may be in issue in a particular case, and could be proved by facts which establish the acquisition of a new domicil, but, where not in issue, should not be considered as constituting an element of proof of change of domicil.

That the decedent went to Reno "for the sole purpose of obtaining a divorce" is stated by the State Referee as a subordinate fact (R. p. 7) and referred to by the Connecticut Supreme Court in its opinion (R. pp. 190, 191). Obviously, this is a different way of stating the ultimate fact as found by the Referee (R. p. 9) and should not be used as a basis for such ultimate fact nor as a reason for upholding the ultimate fact.

Conclusion

The opportunity of the trier of the facts to observe the demeanor and vocal inflections of the witnesses was no better than that of this Court. The facts were found and judgment entered and affirmed on the basis of the transcript of testimony and the exhibits. The petitioner contends that the evidence establishes only that the decedent, before making his last two changes of dwelling, consulted his attorney in each instance, and that such evidence falls far short of that necessary to overcome the presumed validity of the decree of the Nevada Court. The question of domicil being so vital to a determination of marital status, the fact that an attorney gives his client advice on the subject should not tinge with suspicion the actions of the client taken in reliance upon that advice.

It is therefore urged that the foregoing Petition for Writ of Certiorari should be granted.

Respectfully submitted,

DANIEL D. MORGAN,

Counsel for Petitioner.

LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

NO. 117

117

HERMOINE P. RICE,
Petitioner

v.

LILLIAN P. RICE,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF OF THE PETITIONER

DANIEL D. MORGAN,
THOMAS E. SEYMOUR,
Counsel for Petitioner

INDEX

Subject Index

	PAGE
Preliminary Statements	1
Opinion of the Court Below	1
Jurisdiction	2
Statement of the Case	2
Errors Relied Upon	4
Argument	5
Summary	5
I. The evidence produced by respondent concerning the period of time from the marriage of respondent and the decedent until February, 1944, was irrelevant and immaterial as support for the ultimate conclusion	5
II. The evidence produced by respondent concerning the period of time subsequent to February, 1944, and all proper inferences therefrom do not support the ultimate conclusion of the trial court	11
III. The conclusion reached by the trial court is not justified by the subordinate facts found	12
IV. The entire opinion of the Supreme Court of Errors of the State of Connecticut reveals that the burden was improperly placed upon petitioner to establish the validity of the Nevada decree	16
Conclusion	18

Cases Cited

1. *Baldwin* v. *Baldwin*, 163 P. 2nd 54 (Dist. Ct. of App., 2nd Dist., Div. 2, Cal.) 13
2. *Baldwin* v. *Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670 8
3. *Commonwealth* v. *Berfield*, 160 Pa. Super. 438, 51 A. 2nd 523 7
4. *Cox* v. *Cox*, 137 N. J. Eq. 241, 44 A. 2nd 92 ..... 7, 17
5. *Dalton* v. *Dalton*, 270 App. Div. 269, 59 N. Y. Supp. 2nd 68 ..... 8, 12
6. *Esenwein* v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118 7

PAGE

7. *Estin* v. *Estin*, 63 N. Y. Supp. 2nd 476; 271 App. Div. 829, 66 N. Y. Supp. 2nd 421; 296 N. Y. 308, 73 N. E. 2nd 113; 333 U. S. —, 68 S. Ct. 1213 ..... 8, 10
8. *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 92 A. 684 14
9. *Haddock* v. *Haddock*, 201 U. S. 562, 26 S. Ct. 525 6
10. *Hall* v. *Hall*, 199 Miss. 478, 24 So. 2nd 347 6
11. *Hollander* v. *Hollander*, 137 N. J. Eq. 70, 42 A. 2nd 648 6
12. *In re Paul's Estate*, 175 P. 2nd 284 (Dist. Ct. of App., 2nd Dist., Div. 2, Cal.) 9
13. *Krieger* v. *Krieger*, 333 U. S. —, 68 S. Ct. 1221 9
14. *Kurski* v. *Kurski*, 185 Misc. 97, 55 N. Y. Supp. 2nd 748 7
15. *McDonald* v. *Hartford Trust Co.*, 104 Conn. 169, 132 A. 902 ..... 16, 17
16. *Meade* v. *Mueller*, 139 N. J. Eq. 491, 52 A. 2nd 157 13
17. *Messenger* v. *Messenger*, 188 Iowa 367, 176 N. W. 260 17
18. *Mills* v. *Mills*, 119 Conn. 612, 179 A. 5 16
19. *Morgan* v. *Morgan*, 103 Conn. 189, 130 A. 254 17
20. *Mutual Life Insurance Co.* v. *Hillmon*, 145 U. S. 285, 12 S. Ct. 909 18
21. *Reed* v. *State*, 148 Tex. Crim. 489, 187 S. W. 2nd 660 7
22. *Walkinshaw* v. *O'Brien*, 130 Conn. 151, 32 A. 2nd 639 12
23. *White* v. *White*, 80 U. S. App. D. C. 156, 150 F. 2nd 157 7
24. *Williams* v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207 6
25. *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092 ..... 10, 11, 15, 17, 18
26. *Williams* v. *Oscutum*, 232 U. S. 619, 34 S. Ct. 442 ..... 14, 18

CONSTITUTION, STATUTES AND OTHER AUTHORITIES CITED

20 Am. Jur. 1033-1035 12
Constitution of the United States, Art. IV, §1 ..... 2, 5, 18
Judicial Code §237 (b), 28 U. S. C. A. §344 (b) 2
Restatement, *Conflict of Laws*,
§16, Illustration 4, p. 35 15
§22, *Comment b*, 12, p. 46 13
3 Wigmore on Evidence, 2nd Ed. 1923, §1727, pp. 703-704 18

Supreme Court of the United States

OCTOBER TERM, 1948

NO. 117

HERMOINE P. RICE,
Petitioner

v.

LILLIAN P. RICE,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF OF THE PETITIONER

PRELIMINARY STATEMENTS

Opinion of the Court Below

The opinion of the Supreme Court of Errors of the State of Connecticut in this case (R. pp. 209-216) is reported in 134 Conn. 440, 58 A. 2nd 523.

Jurisdiction

The jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code (28 U. S. C. A. §344 (b), now 28 U. S. C. A. §1257 (3)). A final judgment in this case was rendered by the Supreme Court of Errors of the State of Connecticut (R. p. 217), in which said court found there to be no error upon the appeal of the case from the Superior Court of the State of Connecticut for New Haven County, wherein petitioner specially claimed a right under Article IV, §1, of the Constitution of the United States. By its decision, the Connecticut Supreme Court denied petitioner's claim. Petition for writ of certiorari was filed on June 21, 1948, and was allowed by this Court on October 18, 1948 (R. p. 219).

Statement of the Case

(In the following recital of the facts no reference to the record is made as to facts included in the Report of the State Referee (R. pp. 3-7). Reference to the record is made as to all facts not included in said report.)

Respondent and the decedent, Herbert N. Rice, were married in 1921, and from then until September, 1942, lived in and around New Haven, Connecticut. The decedent was engaged in the automobile business in New Haven until June, 1942, when the business was discontinued and most of the equipment sold or leased. In September, 1942, he obtained wartime employment in Springfield, Massachusetts, and lived in that city until March, 1944. In February, 1944, the decedent told petitioner that he had consulted an attorney in Springfield with reference to a divorce and that the attorney had told him that it would be necessary for him to make his permanent home in Nevada in order to obtain a valid divorce there. He also told petitioner that he intended to remain in Nevada permanently whether or not he secured a divorce there, but that if he were successful in securing a divorce he would ask petitioner to marry him (R. pp. 173-174).

In March, 1944, the decedent left for Nevada, arriving in Reno on March 23, 1944. He commenced a divorce action on May 5, 1944, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, personal service of said action being made on respondent in Woodbridge, Connecticut, on May 12, 1944. Respondent authorized two different attorneys in Reno at apparently two different times to enter a voluntary appearance for her in that action, both of which authorizations were revoked prior to the date on which a default decree could have been entered (R. p. 55). On June 13, 1944, a decree was entered in that action granting the decedent a divorce from respondent. Not later than the day following entry of the decree, the decedent's Reno attorney was advised by the attorney who had received the second authorization to enter a voluntary appearance for respondent that said authorization had been reinstated. However, no appearance *nunc pro tunc* was filed (R. p. 55). The decedent notified petitioner of the decree, and she came to Reno, arriving there on July 3, 1944. On that same day, the decedent and petitioner were married.

Before the decree was granted, the decedent consulted his Nevada attorney with reference to the effect of his taking a wartime job in Herlong, California, upon his Nevada residence as he wanted to maintain such residence. The Nevada attorney explained to the decedent that it would be "all right" for him to take such a job (R. p. 52).

On July 15, 1944, the decedent and petitioner went to Herlong, California, where they both had obtained wartime employment at the Sierra Ordnance Depot, of which the town of Herlong entirely consisted (R. p. 179), although the decedent continued to pay rent on the room he had rented when he had first come to Reno. The two had opened a joint bank account in Reno on July 14, 1944.

After they went to Herlong, the decedent and petitioner continued to occupy the room in Reno on week-ends. In September,

1944, petitioner sent for furniture that she had stored in New Haven, Connecticut, and used it to furnish the quarters that were provided for them at the Sierra Ordnance Depot. In October, 1944, they attempted to register as voters in Nevada, but could not do so because they had not resided in the state for one year.

The decedent and petitioner were working at the Sierra Ordnance Depot and living in their quarters there and at the time of the decedent's death, December 23, 1944.

To determine the widowhood status of the parties to this action and questions concerning inheritance of the decedent's property, respondent brought an action in the Superior Court of Connecticut for New Haven County, seeking a judgment declaring herself to be the widow of the decedent and declaring the Nevada divorce to be colorable only. Due to the death of the trial judge, the record was referred to a State Referee (R. pp. 4-5). The Referee submitted a Report (R. pp. 5-7), which report was accepted by the Judge of the Superior Court, who rendered judgment for respondent. Petitioner appealed to the Supreme Court of Errors of the State of Connecticut (R. p. 42) which held that there was no error (R. p. 209) and confirmed and established the judgment of the Superior Court.

Errors Relied Upon

The Connecticut Supreme Court erred in allowing the ultimate conclusion of the Superior Court to be supported by only remote and irrelevant evidence. The court erred in holding that proof of abandonment of a former domicil be a necessary element in the proof of a change of domicil. The court erred in holding that the judgment of the Superior Court could not be reversed unless the facts showed *as a matter of law* that the decedent was domiciled in Reno. The court erred in allowing the burden on the question of the validity of the Nevada decree to be shifted to petitioner. The court erred in allowing improper inferences from

the evidence to stand as a basis for the ultimate conclusion reached by the Superior Court. The court further erred in allowing the statement that the decedent went to Nevada for the sole purpose of obtaining a divorce to stand as an unreviewable finding of fact. The culmination of all of the above errors was a failure on the part of the Connecticut Supreme Court to give the Nevada decree the full faith and credit to which it was entitled under Article IV, §1, of the Constitution of the United States.

ARGUMENT

Summary

Petitioner seeks to show that the evidence produced by respondent was incompetent to support the ultimate finding and to overcome the presumpiton of validity of the Nevada decree and that the only proper inference that could be made from such evidence was that the Nevada court had jurisdiction to grant the divorce to the decedent. The second point in the argument is that the Connecticut Supreme Court, in sustaining the ultimate conclusion of the Superior Court, utilized circuitous reasoning and based its decision on improper inferences from the facts found.

I. The evidence produced by respondent concerning the period of time from the marriage of respondent and the decedent until February, 1944, was irrelevant and immaterial as support for the ultimate conclusion.

The trial court admitted into evidence a large volume of testimony concerning the relations between respondent and the decedent from the time of their marriage until the decedent left for Nevada, especially with reference to the time subsequent to the date the decedent left New Haven to work in Springfield. It was claimed by respondent, received into evidence by the Superior Court and its reception justified by the Connecticut Supreme Court, to

prove the allegation in respondent's complaint that the decedent did not abandon his Connecticut domicil when he left for Springfield (R. p. 216). Petitioner contends that, granting the admissibility of such evidence for said purpose, it is irrelevant and too remote for the purpose of showing that the decedent's domicil was not changed to Nevada.

It was argued by respondent that such evidence was pertinent to the question due to the concept that domicil is a question of intent, hence evidence bearing on the decedent's intention at any time was proper. However, that concept does not require that no line for remoteness or irrelevancy can be drawn. Domicil is a question of intent, but the intention to make a certain dwelling place one's home must concur with actual presence at that place. Reason demands that evidence concerning a change or lack of change of domicil be restricted to events connected with the actual change of residence and subsequent to such change.

Since *Haddock* v. *Haddock*, 201 U. S. 562, 26 S. Ct. 525, was overruled by this Court in *Williams* v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207, the question of change of domicil, unfettered by the concept of matrimonial domicil and jurisdictional fault, has emerged as the sole issue in the determination of the validity of most foreign *ex parte* divorces. Decisions of courts of other States which have had occasion to rule on the question reveal that evidence relating to the time subsequent to the date that the party obtaining the divorce removed to the State in which the divorce was obtained is determinative of the question of the jurisdictional foundation for the divorce. In *Hall* v. *Hall*, 199 Miss. 478, 24 So. 2nd 347, the immediate resumption of residence and a medical practice in Mississippi after a foreign divorce was held to justify a finding that the divorce was invalid. In *Hollander* v. *Hollander*, 137 N. J. Eq. 70, 42 A. 2nd 648, the New Jersey residence of the party obtaining the divorce was interrupted only for a period of time little more than the residence requirement of the foreign

State; similarly, in *Cox* v. *Cox*, 137 N. J. Eq. 241, 44 A. 2nd 92, the husband merely took an extended vacation from his position as school principal to obtain a foreign divorce and resumed his position immediately. In both cases the New Jersey court held the divorces to be invalid. In *White* v. *White*, 80 U. S. App. D. C. 156, 150 F. 2nd 157, in which it was found that the defendant ". . . . went to the State of Florida solely for the purpose of obtaining a divorce, and with no bona fide intention of remaining in said state permanently or indefinitely . . . .", it was held that the foreign divorce was invalid. Where it was clear that the husband remained in the foreign State for a few months after the divorce decree merely because of profitable war work and then returned to the State of his original domicil the Pennsylvania court held that the divorce was invalid; *Commonwealth* v. *Berfield*, 160 Pa. Super. 438, 51 A. 2nd 523. In *Kurski* v. *Kurski*, 185 Misc. 97, 55 N. Y. Supp. 2nd 743, the husband returned to New York and his former job six days after the divorce decree was entered without having severed his membership in a New York labor union; the divorce was held to be invalid. In *Reed* v. *State*, 148 Tex. Crim. 489, 187 S. W. 2nd 660, the accused's conviction for bigamy was sustained where it was shown that he had been domiciled in Texas both before and after obtaining a divorce in Oklahoma.

In *Esenwein* v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, this Court sustained a decision in which the foreign divorce was held to be invalid where the husband, although he did not return to the State of his pre-divorce domicil, acquired a domicil in a third State soon after obtaining a sister-State divorce.

A rule derived from the above cases would require that a divorce is invalid if the residence of the party obtaining the divorce in the State in which it is obtained constitutes merely a temporary sojourn in that State, which is most adequately proven by facts which show that he left the State soon after the divorce and resided and was

domiciled in another State, either the State of his former domicil or a third State, showing that either his former domicil was not interrupted or that his stay in the State of the divorce was merely an interlude in a change of domicil. The evidence pertaining to the time subsequent to and concerning his first change of residence is the evidence which would be material.

This is further emphasized by the cases in which the sister-State divorces were held to be valid, the evidence pertaining to the move to the State of the divorce and thereafter showing that the party obtaining the divorce did not return immediately to the State of his former domicil or move to a third State. In *Dalton v. Dalton*, 270 App. Div. 269, 59 N. Y. Supp. 2nd 68, the husband and wife separated in 1938 after living together for 13 years. The husband went to Illinois and obtained a default divorce after living there four years. At the time of the institution of the divorce suit the husband was living in Washington, D. C. The New York court held the divorce to be valid. In *Baldwin v. Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670, the husband obtained a divorce in Reno on December 16, 1939, approximately five months after he had left California. Both before and after the divorce the husband lived in a hotel and apartments in Reno. It was held that the jurisdiction of the Nevada court was supported by those facts.

Perhaps the most significant of all the cases involving this question is *Estin v. Estin*, 63 N. Y. Supp. 2nd 476. In that case the husband commenced his residence in Reno in January, 1944, having stopped there on his way to California. He commenced a divorce action in April, 1945. He lived in hotels all the time in Reno, and he paid poll and property taxes, had his car registered in and indicated in federal income tax returns that his residence was in Washoe County, Nevada. The wife in New York sued on a prior New York separation decree, payments under which were in default since the date of the Nevada divorce. The New

York court considered two questions: (1) Was the divorce valid? (2) Did the divorce terminate the husband's obligations under the separation decree? The court held that the divorce was valid. The case was appealed on the second issue (271 App. Div. 829, 66 N. Y. Supp. 2nd 421; 296 N. Y. 308, 73 N. E. 2nd 113) and was reviewed by this Court on that issue, 333 U. S. —, 68 S. Ct. 1213, along with the similar case of *Krieger* v. *Krieger*, 333 U. S. —, 68 S. Ct. 1221, which second issue is not material here. In the first written opinion in the history of that case, the court said (63 N. Y. Supp. 2nd at 482):

> "From the foregoing facts there seems to be no doubt that the defendant is now and since January 1944 has been a bona fide resident of the State of Nevada and there is no evidence of any probative force in the record which would indicate anything to the contrary."

In re Paul's Estate, 175 P. 2nd 284 (Dist. Ct. of App., 2nd Dist., Div. 3, Cal.) contains facts which are strikingly similar to the case at bar. H and W were married in 1928 and lived in California. On July 7, 1945, W started a divorce action in California and they executed a separation agreement. On July 12, 1945, H went to Reno; he filed a complaint for divorce there on August 29, 1945. When he went to Reno he told friends he was going to look for a business location outside California. Before the Nevada divorce was granted he wrote to X, the woman he subsequently married, that he liked Reno and was looking for a building to purchase. Prior to the divorce, X went to Reno and had her personal belongings shipped there. After the divorce and after H and X were married they returned to H's former home town in California to collect money due H from his former partner on account of the winding up of their business, but H and X apparently decided to move back. They were living in California when H died. W appealed from the appointment of X as administrator of H's estate. Although W had filed an appearance in the Nevada divorce action, she was held not to be estopped from

claiming the Nevada divorce to be invalid for want of jurisdiction; hence the case can properly be compared with cases involving default divorces. After deciding the preliminary question that W could bring the action, the court held that the above facts supported the lower court's finding that H had acquired a Nevada domicil. It is not known whether or not the above case has been appealed to a higher California court, and it would serve no purpose to discuss whether or not the decision of this Court in *Estin* v. *Estin*, *supra*, makes the jurisdictional question in the above case moot.

Because this Court is open "to consider claims . . . that the courts of one State have not given the full faith and credit to the judgment of a sister-State that is required by Art. IV, §1, of the Constitution." (*Williams* v. *North Carolina*, 325 U. S. 226, 233, 65 S. Ct. 1092, 1096) petitioner contends that the above cases illustrate a rule that is a logical outgrowth of the second *Williams* case, *supra*. Because "The burden of undermining the verity which the Nevada decrees import rests heavily upon the assailant." (325 U. S. at 233, 65 S. Ct. at 1097), and because "such issue of jurisdictional fact . . . [must be] left for fair determination by appropriate procedure, and . . . a finding adverse to the necessary foundation for any valid sister-State judgment . . . [must be] amply supported in evidence . . ." (325 U. S. at 234, 65 S. Ct. at 1097), a State court must carefully scrutinize all the evidence offered to upset a sister-State decree as to its relevancy and materiality. Petitioner contends that the second *Williams* case, *supra*, requires that, in order to establish a prima facie case of lack of jurisdictional basis for a sister-State divorce decree, it must be shown by material and competent evidence that the person who acquired the divorce established a domicil in another state soon thereafter or returned to his former State under circumstances that indicate he was either making his home there anew or returning to it. The facts of the *Williams*

case itself bear this out, for there the guilty parties returned to North Carolina immediately after they obtained their Nevada decrees (325 U. S. at 235, 65 S. Ct. at 1097). Therefore, the only relevant facts are those which pertain to the decision to make the first change of residence and the time subsequent to such decision; facts pertaining to a period prior to such decision have no place in the proof of the lack of change of domicil. It has already been shown that the decedent's actions and statements prior to his decision to depart from Springfield were admissible only to support Paragraph 3 of respondent's complaint (R. p. 1). Furthermore, the record indicates that although said paragraph was denied in petitioner's answer (R. p. 3), petitioner was prepared to and did admit that the decedent's domicil was in Connecticut until the time that he formed the intention of making Nevada his home (R. pp. 57-58). Nevertheless, the evidence was admitted over objection of counsel.

II. The evidence produced by respondent concerning the period of time subsequent to February, 1944, and all proper inferences therefrom do not support the ultimate conclusion of the trial court.

The evidence pertaining to the above mentioned period produced by the respondent appears on pages 45-50 of the record. It contains a transcript of the Nevada divorce proceedings and the deposition of the decedent's attorney in Reno. The facts produced by such evidence are that the decedent intended to remain indefinitely in Nevada and intended not to return to Connecticut, and that he consulted his attorney about the effect on his Nevada residence of his taking a war job in Herlong, California. Respondent claims that the decedent's move to Herlong after the divorce indicates that his Nevada residence did not amount to domicil. However, the decedent's attorney had told him that it would be "all right" for him to take a position at the Sierra

Ordnance Depot in Herlong (R. p. 52). Such evidence could scarcely permit an inference that the decedent's domicil was thereby changed, especially in view of the fact that Herlong, California, consisted of nothing other than the Army base (R. p. 179), or that prior to his consultation with the attorney it had been other than Nevada. See *Dalton* v. *Dalton*, 270 App. Div. 269, 272; 59 N. Y. Supp. 2nd 68, 71, and cases cited.

III. The conclusion reached by the trial court is not justified by the subordinate facts found.

The Report of the State Referee (R. pp. 5-7) as amended (R. p. 7) and corrected (R. p. 31) was accepted by the trial court in its declaratory judgment (R. p. 41). With the exception of Paragraph 5 of the Report (R. p. 6), wherein it is stated that the decedent went to Reno "for the sole purpose of obtaining a divorce", the conclusion reached in Paragraph 10 of the Report comes as a complete surprise after the reading of Paragraphs 1 to 9. The only proper evidence produced by respondent upon the question of the decedent's intention is his testimony in the divorce action and his statement to his Nevada attorney (R. pp. 45-56), the remaining evidence produced by respondent having been admissible for only a special purpose. Hence, the only reason for including the statement in Paragraph 5 above referred to in the finding must have been the Referee's apparent disbelief of petitioner's statements. Disbelief of statements cannot be raised to the stature of evidence as to the opposite of such statements. This has been the Connecticut rule. See *Walkinshaw* v. *O'Brien*, 130 Conn. 151, 153, 32 A. 2nd 639, and cases cited. It would seem that the proper effect to be given a disbelief of the statements is to remove them from consideration. See 20 Am. Jur. 1033-1035 as to testimony manifestly untrue or contrary to the laws of nature. However, at most the effect could be to establish an inference in this case that *one* of the motives of the

decedent in going to and remaining in Nevada was to get a divorce and return to Connecticut. Even if, *arguendo*, disbelief of the statements were allowed to raise a suspicion that the decedent's *sole* motive in going to and remaining in Nevada were to obtain a divorce such suspicion should not be allowed the weight necessary to establish the ultimate conclusion reached by the trial court.

> "Nor will a suspicion of fraud in the prosecution of a divorce action by such party in the foreign jurisdiction avail to defeat the foreign decree . . . ." *Baldwin* v. *Baldwin*, 163 P. 2nd 54, 56 (Dist. Ct. of App., 2nd Dist., Div. 2, Cal.).

In *Meade* v. *Mueller*, 139 N. J. Eq. 491, 52 A. 2nd 157 at 159, the court said:

> "No evidence was produced at the hearing, except the documents above referred to, to show that Mrs. Meade at the time the Nevada decree was granted was not domiciled in Nevada. The defendant's proofs raise a suspicion that the purpose of the wife in going to Nevada was to obtain a divorce and that she did not intend to become a permanent resident there. Mere suspicion, however, is not sufficient to justify this court in declaring that the Nevada decree is invalid in this state . . . ."

The fact that one of the motives for change of residence is to take advantage of more liberal laws cannot prevent a change of domicil from taking place. Restatement, *Conflict of Laws*, Sec. 22, *Comment b*, 12, p. 46.

With the statement in Paragraph 5 of the Report disregarded, it is apparent that the story told by Paragraphs 1 to 9 of the Report is consistent only with the conclusion that the decedent moved to Reno to remain indefinitely. The use of the word "indefinitely" by the Referee indicates that he felt that an intention to remain indefinitely is something less than the intention necessary to establish a domicil. The rule of this Court is that an inten-

tion to remain in a place indefinitely, *coupled with actual residence in the place*, is sufficient to establish a change of domicil.

> "The essential fact that raises a change of abode to a change of domicil is the absence of any intention to live elsewhere. Story on *Conflict of Laws*, Sec. 43,—or as Mr. Dicey puts it in his admirable book 'The absence of any present intention of not residing permanently or indefinitely in' the new abode." *Williams* v. *Oscentum*, 232 U. S. 619, 624, 34 S. Ct. 442.

Furthermore, this was the Connecticut rule; *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 694; 92 A. 684, 686. The only justification available to the Connecticut Supreme Court of the ultimate finding based upon the subordinate facts is that the Report does not state what the decedent's intention was, but what he said it was (R. p. 215), even though there is no finding that such declarations of intention were untrue or disbelieved. The Connecticut Supreme Court justified the ultimate finding upon the apparent disbelief of those statements (R. p. 215) and also held that if the Referee misinterpreted the meaning of the word "indefinitely" it was not prejudicial, because of his apparent disbelief of the decedent's statement (R. p. 216). Certainly such a misinterpretation would be material; if the Referee believed that the decedent intended to remain in Nevada indefinitely he would have to find that the decedent was domiciled in Nevada. See *Williams* v. *Oscentum*, *supra*, *Gildersleeve* v. *Gildersleeve*, *supra*. Furthermore, it is evident that the Connecticut Supreme Court justified the ultimate finding of lack of domicil by circuitous reasoning: The only basis for saying that the Referee disbelieved the decedent's statements is the conclusion reached by him in Paragraph 10 of the Report. This disbelief is used to justify the fact that the decedent did not have a bona fide domicil in Nevada. By holding that an inference from the ultimate fact provides the necessary subordinate facts to justify the ultimate fact, the final

conclusion of the Referee is used by the Connecticut Supreme Court as a basis for its own support.

That the decedent went to Reno "for the sole purpose of obtaining a divorce" (R. p. 6) is also considered by the Connecticut Supreme Court to be a subordinate fact (R. pp. 215, 216) and used to justify the ultimate conclusion. It has already been argued that such a finding was not a proper inference from the evidence. However, the decedent's presence in Nevada is undisputed, leaving as the only ultimate fact to be found or conclusion to be drawn the state of mind of the decedent when he went to Nevada or while he was there. Therefore, to state that he went there for the sole purpose of obtaining a divorce is to state that his domicil was not changed. This Court has said that "State courts cannot avoid review by this Court of their disposition of a constitutional claim by casting it in the form of an unreviewable finding of fact . . . ." *Williams* v. *North Carolina*, 325 U. S. 226, 236, 65 S. Ct. 1092, 1098. The use of such statement as a factual basis for the ultimate conclusion or as a reason for upholding such conclusion is another example of the circuitous reasoning employed by the Connecticut Supreme Court in its decision.

The State Referee apparently laid undue stress upon the fact that the decedent lived in a rented room in Reno, as the Report finds that he "never established a *home* in Reno. He intended to do so in the future if he did not like it at Herlong . . . ." (R. p. 7) (Italics added). The finding no doubt refers to the fact that the decedent had stated that he desired to build or purchase a house or building in Reno (R. pp. 53, 157). However, one need not occupy such a dwelling place in order to establish a "home" in the domiciliary sense.

> "A leaves the state in which he has been domiciled and comes to X, a city in another state, intending to make his home in the city; he lives in temporary lodgings, in hotels and clubs. He is domiciled in X." Restatement, *Conflict of Laws*, §16, Illustration 1, p. 35.

IV. The entire opinion of the Supreme Court of Errors of the State of Connecticut reveals that the burden was improperly placed upon petitioner to establish the validity of the Nevada decree.

It is quite true that parts of the opinion of the Connecticut Supreme Court contain accurate statements regarding its duty as a reviewing tribunal. However, the operative holdings of the opinion, taken separately and cumulatively, show that the court decided that petitioner had failed to establish the Nevada court's jurisdiction rather than whether or not respondent had produced sufficient evidence to overcome the presumption of such jurisdiction. On page 213 of the Record is the statement:

> "The question for solution is whether under the applicable principles of law the referee was warranted in making this finding and whether the court was justified in rendering its judgment thereon."

Then further along are the following quotations (R. pp. 213, 214):

> "'To constitute domicil the residence at the place chosen for the domicil must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicil of the person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with the present intention of making it his home, unless something shall happen to induce him to adopt some other permanent home.' *Mills* v. *Mills*, 119 Conn. 612, 617, 179 A. 5."

> "'When the parties left this State with the intention of never returning, their domicil in Connecticut was not thereby changed. The former domicil persists until a new one is acquired.' *McDonald* v. *Hartford Trust Co.*, 104 Conn. 169, 177, 132 Atl. 902. *Mills* v. *Mills*, *supra*. Therefore proof of the acquisition of a new domicil of choice is not

complete without evidence of the abandonment of the old." *Morgan* v. *Morgan*, 103 Conn. 189, 196, 130 A. 254. As we stated in the *McDonald* case, supra, one's intention in departing from his domicil, not to return to it constitutes no abandonment at that time; 'the law does not permit one to abandon nor recognize an abandonment of a domicil until another has been established . . .'"

It is then held that petitioner's appeal could not succeed, in view of the above quotations, "unless the subordinate facts are sufficient to establish as a matter of law that Rice had acquired a new domicil in Nevada." (R. p. 214). For subordinate facts to establish a conclusion as a matter of law they must be such that they permit of no other conclusion. This certainly is not the standard set up by this Court in *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, nor is it assumed to be by the courts of other States (see I, *supra*). Such a requirement is tantamount to a shift of the burden of proof.

To show that the conclusion was supported by the subordinate facts the Connecticut Supreme Court (R. p. 215) briefly recites the facts found in Paragraphs 1 to 9 of the Referee's Report (R. pp. 5-7), stating as "subordinate facts" that the decedent went to Reno "for the sole purpose of getting a divorce" and that he lived in a rented room in Reno. The propriety of designating them subordinate facts has already been discussed (see III, *supra*). However, the effect thereof is to place upon petitioner the unfair burden of disproving, or the penalty for having failed to disprove respondent's entire case.

The Connecticut Supreme Court implied that the duty of proving abandonment of the Connecticut domicil was necessary to show a change of domicil (R. pp. 213-214). Likewise, the quotations from *Messenger* v. *Messenger*, 188 Iowa 367, 373, 176 N. W. 260, and *Cox* v. *Cox*, 137 N. J. Eq. 241, 245, 44 A. 2nd 92, indicate that petitioner had the burden of corroborating the statements made by the decedent while in Nevada. The burden in this case, as

stated in the second *Williams* case *supra*, was upon respondent to establish by ample evidence that the decedent was not domiciled in Nevada at the time he commenced the divorce action. The rule of this Court regarding change of domicil is stated in *Williams* v. *Oscutum*, *supra*, and in *Williams* v. *North Carolina*, 325 U. S. 226, 236, 65 S. Ct. 1092, 1098, in the extract from the charge to the jury, and the rule recognizes only two elements: (1) residence at the new place, and (2) a present intention of remaining there either permanently or indefinitely. Assuming that declarations as to state of mind by a declarant now unavailable are merely self-serving statements in a case in which such state of mind is in issue, it still remains that the test as to whether or not respondent had sustained the burden imposed upon her does not involve corroboration of such statements by petitioner. Such statements constituted evidence of the principal fact in issue and should not have been summarily dismissed as of "questionable evidential value" or as purely self-serving statements especially when accompanied by evidence of actions consistent therewith. *Mutual Life Insurance Co.* v. *Hillmon*, 145 U. S. 285, 12 S. Ct. 909; 3 Wigmore on Evidence, 2nd Ed., 1923, §1727, p. 703-4.

Conclusion

Petitioner contends that respondent, being a litigant claiming that a sister-State divorce decree was invalid, was required by Art. IV, §1 of the Constitution of the United States, as applied by this Court and by the courts of other states, to produce material and concrete evidence that the decedent did not acquire a domicil in Nevada. Certainty and predictability are of extreme importance in cases of this nature, and it is contended that these features will be best preserved within the confines of the Constitution, by requiring that the sister-State judgment be considered valid until, and only until, there is produced evidence concerning the actions and statements of the person in question tending strongly to show

that his residence in the sister State was solely for the purpose of obtaining a divorce or for other purely temporary purposes. It is clear in this case that all of the evidence falls far short of that criterion. Petitioner was necessarily confined to the claim that respondent's evidence was insufficient to support the ultimate conclusion reached. It should be pointed out, however, that the evidence produced by petitioner was consistent only with the conclusion that the decedent was domiciled in Nevada. What the decedent did and what he said after reaching Nevada were the important facts, all of which support petitioner's claim. It also should be pointed out that this Court is under no more disadvantage in reviewing the record than was the State Referee, as he rendered his findings and conclusion solely upon a written transcript of the evidence and the exhibits.

An examination of the entire opinion of the Supreme Court of Errors of the State of Connecticut in the light of the evidence considered reveals that the reasoning that the Court used to justify the ultimate conclusion of the Superior Court is superficial and illogical and characterized by an assumption that everything said in Nevada concerning a divorce should be disbelieved and taken to be evidence of the opposite of what is said. Finally, the opinion stands for the proposition that all actions taken by a client upon the advice of his lawyer should, when such actions and advice pertain to divorce, be viewed with suspicion and distrust, a proposition that cannot be justified.

Wherefore, petitioner respectfully requests that this Court reverse the judgment of the Supreme Court of Errors of the State of Connecticut and direct entry of judgment for petitioner.

Respectfully submitted,

DANIEL D. MORGAN,
THOMAS F. SEYMOUR,
Counsel for Petitioner.

LIBRARY
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

NO. 117

HERMOINE P. RICE,
Petitioner

vs.

LILLIAN P. RICE,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RALPH H. CLARK,
SAMUEL A. PERSKY,
DAVID M. REILLY,
Counsel for Respondent.

INDEX

Subject Index

	PAGE
Statement of Case	1
Argument	3
Errors Claimed by Petitioner Are Not Supported by the Record	3
Conclusion	8

Table of Cases Cited

Coe vs. *Coe*, No. 37, Oct. Term 1947 (not yet reported)	3
Esenwein vs. *Pennsylvania*, 325 U. S. 279; 65 S. Ct. 1118	7, 9
McDonald vs. *Hartford Trust Co.*, 104 Conn. 169	5
Morgan vs. *Morgan*, 103 Conn. 189	5
Sherrer vs. *Sherrer*, No. 36, Oct. Term 1947 (not yet reported)	3
Williams vs. *North Carolina*, 325 U. S. 226; 65 S. Ct. 1092	3, 7

Springfield, Massachusetts, down to the time of his departure for Reno in March, 1944, he told the respondent and others that his job in Springfield was a temporary one and that when the war was over he intended to return to Woodbridge and re-open his automobile business. He also retained his home in Woodbridge during all of that period. In February, 1944, decedent told the petitioner that he was going to Reno for the purpose of getting a divorce. He told the petitioner of the advice which had been given him regarding making a permanent home in Nevada and stated to the petitioner that, "he was never going to come back to Connecticut or the east." (Rec. p. 156.)

When Rice went to Reno in March, 1944, he went there for the sole purpose of obtaining a divorce from the respondent. Although personal service in the divorce action was made upon the respondent by leaving a copy of the complaint in her hands in Woodbridge, Connecticut, no appearance was ever entered by her in the divorce action which had been instituted by the decedent in Reno, Nevada. During the period that Rice lived in Reno, he lived in a rooming house which he had rented by the week and he obtained a job at war work in Reno, which job he resigned on July 2, 1944, the day before he and the petitioner were married. Before obtaining his divorce on June 13, 1944, Mr. Rice told his attorney in Reno that he had made application to the Army Employment Agency for a job, and asked his attorney if it would be all right for him to take such a job at Herlong, California. After moving to Herlong, California, where Rice had obtained a war job, he continued to pay rent for his room in Reno, Nevada, but at a reduced price per week and this room was occupied part of the time by others. Occasionally Rice and his new wife occupied this room in Reno for the week end. The reason why Rice continued to pay rent for the room in Reno was because he did not know whether his job in Herlong, California, would be permanent, or whether he and his wife would like it there, and if they did not like it they intended to return to Reno.

Argument

The sole question presented in this case when it was heard in the Connecticut courts was whether Rice had a bona fide domicil in the State of Nevada at the time he secured his divorce. It has already been decided by this court that where a divorce has been granted in one state, a sister state having jurisdiction of the parties may of itself go into the question of domicil and determine whether a bona fide domicil existed in the state granting the decree. *Williams* vs. *North Carolina*, 325 U. S. 226; 65 S. Ct. 1092. Recently, on June 7, 1948, in the cases of *Sherrer* vs. *Sherrer*, No. 36, Oct. Term 1947 (not yet reported) and *Coe* vs. *Coe*, No. 37, Oct. Term 1947 (not yet reported), this court has further determined that if a defendant in a divorce action enters an appearance in the state court, where the divorce action is pending, he or she is thereafter precluded from raising the question of domicil in any other state. However where the defendant, as in this case, has entered no appearance in the divorce action, the law as laid down in the Williams case still stands.

It is at once apparent therefore that the present case is not one where a state court has decided a federal question of substance not theretofore determined by this court. Apparently petitioner recognizes this and in support of her petition relies solely on the claim that the Supreme Court of Errors of the State of Connecticut decided this case "in a way probably not in accord with the applicable decisions of this court." Our argument is that the record conclusively proves that such claim is unwarranted.

Errors Claimed by Petitioner Are Not Supported by the Record

Petitioner's first claim is that remote and irrelevant evidence was allowed to overturn the Nevada decree. In the opinion rendered by the Supreme Court of Errors of Connecticut (Rec. p. 191) it is stated that claim was made that evidence of [illegible]

tions with his first wife down to the time of his departure for Reno was improperly admitted. The opinion points out that the allegation in the complaint that Rice, during his employment in Springfield, continued to maintain his domicil in Connecticut, was denied. Therefore any evidence that there were no acts, conduct or statements by Rice during that period which indicated an intention to abandon Connecticut as his domicil was properly admitted. It is specifically stated that such evidence was not admitted for the purpose of showing that Rice's matrimonial domicil was in Connecticut, nor was any such question of matrimonial domicil involved in the case.

In further support of her claim that remote and irrelevant evidence was given consideration by the Connecticut court, petitioner has cited a few cases and apparently reached the conclusion that the only relevant facts on the question of domicil are those pertaining to the time after the divorce was secured. Such a conclusion is unsound. The establishment of a domicil is a question of intent. To arrive at the intention of a party, consideration may be given to his acts, conduct and statements at any time. What weight should be given each bit of such evidence is for the trial court to determine.

In the present case, acts, conduct and statements of Rice shortly prior to his departure from Springfield are certainly relevant. Similarly, acts, conduct and statements on his part after arriving in Reno, both prior to and after the securing of his divorce are pertinent and relevant. All such evidence during any of these periods must be considered and weighed in arriving at a conclusion as to what his intentions were regarding domicil.

If the trial court saw fit to disbelieve some of Rice's statements as to what his intention was, it does not follow that a finding of his actual intention has been founded solely on this disbelief. There was ample affirmative evidence to justify the court's conclusions. Many statements by Rice prior to his departure for

Reno, if believed by the court, were sufficient to establish lack of intention to acquire a new domicil. Similarly, much of his conduct and actions after arriving in Reno, both before and after the securing of the divorce, were sufficient to establish lack of intention to establish a new domicil if his statements to the contrary were disbelieved. As stated by the Connecticut court (Rec. p. 191) if his statements that he intended to reside "permanently" in Nevada were disbelieved, it becomes immaterial to determine whether his statement that he intended to remain "indefinitely" should be construed as meaning "permanently."

The petitioner also relies on the claim that the Connecticut court erred in requiring that proof of the abandonment of the Connecticut domicil was a necessary element in proof of a change in domicil. Petitioner claims that the Connecticut cases of *McDonald* vs. *Hartford Trust Company*, 104 Conn. 169 and *Morgan* vs. *Morgan*, 103 Conn. 189, are not good law. It can hardly be disputed that the law everywhere is that a former domicil persists until a new domicil is acquired. The *Morgan* case states that therefore proof of a new domicil of choice is not complete without evidence of an abandonment of the old. What was meant by this statement is explained in the *McDonald* case which was decided not long after the *Morgan* case. This case points out that where one leaves his former domicil with an intention never to return there, he has not as a matter of law abandoned the previous domicil until another one has been established. A quotation from the *McDonald* case at page 177 of the opinion is as follows:

> "Before McDonald could acquire a domicil in Louisville, two things were necessary, he must have established a residence there and while so residing he must have had the intention of making it his home. His intention not to return to Springfield, coupled with his residence in Louisville, were relevant facts tending to prove that he intended to make Louisville his home, but *by themselves* they are not conclusive."

In other words the requirements of domicil are *residence* in a place, coupled with an intention of making it one's *home*. Residence, coupled with an intention not to return to the former domicil, may be relevant facts as to whether there was an intention to make the new residence a home, but they are not conclusive, nor does the mere intention never to return to the former *home* constitute an abandonment of that place as a pre-existing *domicil* until a new one is acquired. In short it is the acquisition of a new *home* in another place that is essential to the acquisition of a new domicil and the acquisition of a new *home* that is necessary before a pre-existing *domicil* can be said to have been legally abandoned. We submit that this is sound law, nowhere contradicted, and supported by all of the definitions of domicil in the decisions of this court.

Petitioner makes a third claim that the language of the opinion by the Connecticut Supreme Court of Errors indicates that the court shifted the burden of proof and placed the burden of establishing the validity of the Nevada decree on the petitioner rather than placing the burden upon the respondent of undermining the verity of the Nevada decree. Petitioner attempts to support this claim by quoting from the opinion of the Connecticut Supreme Court of Errors on page 189 of the record. As so often happens, petitioner has failed to quote at sufficient length. A reading of the opinion commencing at the top of page 188 of the record discloses that the finding of the Referee which was attacked by the appellant was that Mr. Rice had never established a home in Reno and did not have an unqualified intention to make a home there at present and that Reno was not his bona fide domicil. The court pointed out this this was "a finding of ultimate fact, a conclusion drawn from the subordinate facts and inferences therefrom." The opinion says that to be sustained such a conclusion,

> "must have been logically drawn from those facts, without violation of the plain rules of reason. The question for solution is whether under the applicable principles of law the

> Referee was warranted in making this finding and whether the court was justified in rendering its judgment thereon."

After referring to the law on change of domicil, the opinion at page 189 of the record comes to the portion quoted by petitioner on page 15 of her brief. Relying upon the *Williams* case (supra) the court states that the burden was on the plaintiff to prove that Rice did not have a domicil in Reno. What follows in the opinion does not in any way shift this burden. The court merely says that to upset a finding of an ultimate fact of no domicil in Nevada, the appellant must show that the subordinate facts as a matter of law indicate that Rice had acquired a new domicil in Nevada. If we quote further from the opinion where the petitioner has left off, we find the following (Rec. p. 189):

> "Whether the Referee was warranted in concluding that during Rice's stay in Reno, he did not have the requisite bona fide intention to make it his home and therefore acquired no domicil in Nevada depends upon whether this is a reasonable inference from the subordinate facts found."

The *Williams case (supra 236)* and the case of *Esenwein vs. Pennsylvania*, 325 U. S. 279, 281; 65 S. Ct. 1118 are cited in support of this statement. There is nothing in the opinion of the Supreme Court of Errors of Connecticut that counteracts its statement that the burden rested upon the plaintiff to prove that Rice did not have a domicil in Reno. All that is stated is that when the trial court has found as a conclusion of fact based upon the subordinate facts that such burden has been sustained and lack of domicil proven, such a finding of ultimate fact cannot be upset unless the subordinate facts show to the contrary as a matter of law that Rice had acquired a new domicil in Nevada.

The last alleged error relied upon by the petitioner is that the Connecticut Supreme Court of Errors erred in allowing the statement that the decedent went to Reno for the sole purpose of obtaining a divorce to stand as an unreviewable finding of fact. If one reads the entire transcript of the evidence contained in the record

one does not find one bit of evidence as to why Rice went to Reno other than the testimony of the petitioner herself as to what Rice told her in February, 1944, which was that an attorney in Springfield had "told him to go out to Reno to get his divorce." (Rec. p. 154). Again on page 156 of the Record, petitioner's attorney, in addressing a question to her prefaced it as follows:

> "Q. When Mr. Rice told you sometime in February, 1944, that he was going to Reno for the purpose of getting a divorce . . . ."

In view of the fact that petitioner offered no other evidence whatsoever as to Rice's motive for going to Reno, how can she now find fault with a finding that he went to Reno for the sole purpose of obtaining a divorce? It should be noted that the respondent has never claimed that such a motive was conclusive on the question of domicil, nor does the Connecticut court so hold. All that the opinion states is "while such a motive is not conclusive it is a pertinent fact bearing upon the good faith of his residence in Nevada." (Rec. p. 191.)

Conclusion

Petitioner claims that the evidence establishes only that Rice consulted his attorney in two instances before changing his dwelling place, and that advice given him should not tinge with suspicion his actions in reliance thereon. As a matter of fact the opinion of the Supreme Court of Errors of Connecticut (Rec. pp. 190, 191) gives a complete and fair summary and weighing of the evidence on both sides. It is particularly to be noticed that attention is called to the fact that the Referee's finding, "is not what Rice's intention was, but only what he said it was." That such statements might have been regarded as of questionable evidential value is amply supported by the quotations from the cases cited in the opinion. The finding of the Referee that Rice's retention of the room in Reno, "was because he did not know whether his job in Herlong would prove permanent or whether he and the

defendant would like it there" is based on the testimony of the petitioner herself. (Rec. bottom of page 161, top of page 162.)

We submit in closing that this petition is nothing more than an attempt on the part of the petitioner to have this court retry this case upon the facts. An attempt to do this falls squarely within the language of the opinion of this court in the *Esenwein case, Supra, p. 281*. "The Pennsylvania courts have viewed their constitutional duty correctly. It is not for us to retry the facts and we cannot say that in reaching their conclusion, the Pennsylvania courts did not have warrant in evidence and did not fairly weigh the facts."

We say that the record shows conclusively that the Supreme Court of Errors of the State of Connecticut fairly weighed all the evidence in the case by relevant standards of proof, that the finding of the Connecticut court was amply supported in evidence, and that its decision in every way was in accord with applicable decisions of this court and that the petition for writ of certiorari should be denied.

Respectfully submitted,

RALPH H. CLARK,
SAMUEL A. PERSKY,
DAVID M. KELLY,
Counsel for the Respondent

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
DEC 6 1948
CHARLES E.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

NO. 117

HERMOINE P. RICE,
Petitioner

vs.

LILLIAN P. RICE,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ERRORS OF THE STATE OF CONNECTICUT

Brief of the Respondent

RALPH H. CLARK,
SAMUEL A. PERSKY,
Counsel for Respondent.

INDEX

Subject Index

	PAGE
Statement of Case	1
Argument	4
I. The ultimate conclusion of the Connecticut court is supported by evidence that was material and relevant	5
II. Abandonment of former domicil is a necessary element in proving change of domicil	10
III. The Connecticut court did not shift the burden of proof onto petitioner	11
IV. Finding that Rice went to Reno for the sole purpose of obtaining a divorce is supported by all of the evidence	12
V. The ultimate conclusion of the Connecticut Supreme Court of Errors is supported by the evidential facts and the proper inferences therefrom	15

Cases Cited

1. *Baldwin* vs. *Baldwin*, 28 Cal. 2nd 406, 170 Pac. 2nd 670 . . . 3
2. *Coe* vs. *Coe*, 334 U. S. 378, 68 S. Ct. 1094 . . . 4
3. *Commonwealth* vs. *Berfield*, 160 Penn. Super. 438 . . . 7, 20
4. *Commonwealth ex rel. Meth* vs. *Myth*, 156 Pa. Super. 632, 639 . . . 18
5. *Dalton* vs. *Dalton*, 270 App. Div. 269, 59 N. Y. Sup. 2nd 68 . . . 6, 20
6. *District of Columbia* vs. *Murphy*, 314 U. S. 441 . . . 18
7. *Esenwein* vs. *Pennsylvania*, 325 U. S. 279, 281, 65 S. Ct. 1118 . . . 20

PAGE

8. *Estin* vs. *Estin*, 63 N. Y. Sup. 2nd. 476 8
9. *Gildersleeve* vs. *Gildersleeve*, 88 Conn. 689, 694 14
10. *Hall* vs. *Hall*, 199 Miss. 478, 490 ..... 14, 18
11. *In re Paul's Estate*, 175 Pac. 2nd. 284, 287 8
12. *McDonald* vs. *Hartford Trust Co.*, 104 Conn. 169, 132 Atl. 902 10
13. *Mills* vs. *Mills*, 110 Conn. 612, 618 19
14. *Morgan* vs. *Morgan*, 103 Conn. 189, 130 Atl. 254 10
15. *Sherrer* vs. *Sherrer*, 334 U. S. 343, 68 S. Ct. 1087 4
16. *State* vs. *Cooke*, 110 Conn. 348, 351 14
17. *Williams* vs. *North Carolina*, 325 U. S. 226, 234, 65 S. Ct. 1092 ..... 4, 20

OTHER AUTHORITIES CITED

Nelson on Divorce, para. 21.17 14
Restatement of the Law, *Conflict of Laws*,
Sec. 19 19
Sec. 20 19
Sec. 23 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

NO. 117

HERMOINE P. RICE,
Petitioner

vs.

LILLIAN P. RICE,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF OF THE RESPONDENT

Statement of Case

In petitioner's statement of case in her brief reference is made to two facts appearing on page 56 of the Record to the effect that respondent authorized two attorneys in Reno to enter a voluntary appearance for her in the divorce action there, both of which authorizations were revoked prior to the date on which a default decree could have been entered; and also that following entry of